

THE *Tanner. 609*
Stile of Exchanges

Containing both their

Law & Custom

As Practised now in the most consider-
able places of *Exchange* in *Europe*.

Unfolding divers

MYSTERIES

AND

Directing every Person, howfo-
ever concerned in a *Bill of Exchange*,
to what he ought to do and observe, in
any case, in order to his own security.

*Translated out of Low & High-Dutch, French
and Italian-Latine Authors.*

The whole being Methodically digested into
Chapters and Sections, that by the help of an *Index*
any particular Case may readily be found.

By *John Scarlett,*
Merchant of the Eastland Company.

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tioner, at the Sign of the Book in Grace-Church-
Street, near Cornhill, 1682.

Thom. Tanner

THE 2nd Nov. 1841
Sale of Exchanges

James E. Carter

As the said James E. Carter is the owner of the said Exchanges and is desirous of selling the same in the best manner possible

MY T B R I E S

AND

the said James E. Carter is desirous of selling the same in the best manner possible

the said James E. Carter is desirous of selling the same in the best manner possible

James E. Carter

the said James E. Carter is desirous of selling the same in the best manner possible

THE
Epistle Dedicatory!

Serenissimo & Potentissimo, Principi et Domino. Domino friderico-Wilhelmo Marchioni Brandenburgico, sacri Romani imperji Archicamerario & Principi Electori, Magdeburgi, Prussiae, Stetini, Pomeraniae, juliae Cliviae, Montium, Cassubiae & Vandalorum, in Silesia quoque, Grosnae et Carniola duci; Burgravio Nurenbergae, Principi Rugiae Halberstadji & Mindenae, comiti Marcae & Ravensbergi, domino in Ravenstein,

Summo

The Epistle Dedicatory.

**Summo Religionis Reformatæ
Patrono,
Maximo gentis Teutonice Marti.
Nac non
Mercaturæ tam Maritimæ quam
Terrestris,
Promotori Illustrissimo.**

*Hunc de Cambjis Tractatum
ut obsequii gratitudinisque
Symbolum, devotissimo animi
cultu dat, dicat dedicatque*

**Johannes Scarlett,
Anglo-Britannus, Societatis Bal-
tiche Mercatorum Anglorum
Socius, Regiomonti in Prussia
Residens.**

ERRATA.

SOME Faults have escaped the Press by reason of the Author's remote Absence from *London*; which the Reader is desired to Correct; some of them are here inserted, *viz.*

Preface page 3. line 9. for *observe* read *obscure*. Pref. p. 6. l. 27. f. *Mala* r. *Mali*. Pref. p. 9. l. 8. f. *Vulser* r. *Vultur*. In the Book p. 98. l. 18. f. *Lessaben* r. *Lisbonne*: And where the word *Broger* is, read *Brocker*.

THE

THE PREFACE.

Great are the Mysteries of Merchants Trading to Forreign Parts; nor was ever any one Merchant capable of understanding all the Mysteries of every Forreign Trade; whence it comes, that there are so many several Species (as I may call them) of Merchants, as Spanish, French, &c. but there are very few Merchants that have not something to do with Exchanges, either Forreign or Domestick; and yet of all those that practise Exchanges, how few are they that rightly understand it! as appears by the multitudes that ignorance of the nature hereof, of the Rules and Laws hereof, hath undone: This to many, if not to most Merchants, remains a Mystery, and is indeed the greatest and weightiest Mystery that is to be found in the whole Map of Trade. On this consideration, for the Information of Young Men especially, I thought myself obliged to translate this piece, which contains the Practick part of Exchanges, and as they are regulated and practised at the greatest Banks for Exchanges, and the greatest Place of Traffick in Europ: If there be any thing in
A
Mis.

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Merchandize that requires circumspection, knowledge and prudence, here it is; herein Merchants must be critical.

To every Chapter I have added what Marius his advice is in this matter; besides that, many notable things are transcribed out of Latin, German and Italian Authors, of all whose large Books of Cases, this may be called a Compendium.

I may perhaps be judged very presumptuous in attempting to unfold the Mystery of Exchanges, when which the whole course of Traffick hath nothing more intricate. But I shall for my excuse say no more than this, That I only tread in the steps of those that have wanted no opportunities to learn and know the Practick, as well as Theory thereof; I have but collected what others have written in Latine, French, Italian, High and Low-Dutch, and made them to speak in a Language that all English Merchants might understand; and this I think I may assert, That the Authors neither wanted Experience to know the Practice, nor Learning to know the Laws thereof; and I therefore hope, this small Treatise will be of great advantage, and tend much to the unfolding of some of the grand Mysteries of Exchanges.

None will deny, but that the knowledge thereof is as necessary as it is profitable, and as profitable as necessary, and that to all that are concerned therein; not to Merchants and Traders
only

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only, but to Lawyers, Attorneys, and others, who must manage, plead and direct the Suits of Merchants about Exchanges, which they never can effectually do, unless they be well informed in the customs of Merchants; without this it will be almost impossible to discern between the justice and injustice, the equity and inequity of these Exchanges.

Intricate and obscure, they are, if we respect either matter of Fact or matter of Law.

In respect of matter of Fact they are so, 1st, Because Merchants (if they may be called Merchants, or rather griping Usurers and Extortioners) daily study to make them difficult and obscure, to palliate their unlawful Usury.

2dly, Because many Fictions are practised and allowed of, and that both of persons and payments, and such as are not only paradoxical, but contradictory.

3dly, Because of the conciseness of the forms, and the couching of so many contracts and obligations into so few words that they are scarce discernable by moderate capacities.

4thly, Because of the variety of unheard of terms of Art, that neither the Law nor Lawyers do well understand, the knowledge whereof must be learned from the practice of Merchants, and not from Magna Charta, Justinian, Cooke or Littleton, &c.

And if in matter of Fact they be thus obscure, they must necessarily in matter of Law; for ex

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facto Juroribus, that a multitude of artifice
Usurers have invented to palliate their Extortion,
unsatisfactory as it may be imagined; they have puzzled their
Pater Confessors, and the greatest Doctors of
Divinity; on the one hand to, solve their cases of
Conscience; and on the other, the greatest Do-
ctors of the Law to manage their intricate
Cases; nor indeed can they agree among them-
selves about the nature thereof; some will have
Exchanging to be properly a Bartering, others
a Borrowing and Lending; some will
have it to be Depositing; others not knowing
what to term it, call it, Contractus Inno-
minatus; some will have it to be a Chang-
ing of Monyes for Monyes; others,
Contractus Locations; and some will
have it to be a Buying and Selling prop-
erty; others again will assert, That All these
are included in it, and applicable to it;
and indeed, it is not a pin matter whether it be all
or any of these, if commutative Justice be but
observed, nor shall I further trouble the Reader
or my self with these Controversies.

Nor with Disputes about the lawfulness or
unlawfulness thereof; wherewith I could have
filled a large Volume in Folio, if I would have
translated what Sigism. Seaccia hath writ about
this; I take it for granted, that its abused by
Usurers and Extortioners, and even so far
is utterly Unlawful. But this notwithstanding,
the lawful use thereof, as its most frequently
practised

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practised among Merchants, is not so abandoned; only by the way, let honest Merchants here be cautioned, That from the lawful use thereof they be not tempted insensibly to slide into the unlawful abuse thereof, lest of honest Merchants, they become griping Usurers; and this caution is so much the more necessary, in regard of the intricacy of Exchanges, and the difficulty of finding out the Knavery of an Exchange-contrail; for as the Spanish Proverb is, *Área aperta justum ad peccandum invitat*, which is in plain English, Opportunity makes a Thief.

Nor with the variety of divisions and subdivisions, which divers Authors make, according to their own Conceptions, and the Idea thereof that they have framed to themselves, as into apparently Lawful and apparently Unlawful, and some Ambiguous, some Pure, some Impure, some Mixt, some Real, some Feigned, some Wet, some Dry; all which Divisions and Sub-divisions tend more to the obscuring and confounding the true nature of Exchanges, than to the unfolding of them; for from all its Qualities and Accidents, it is capable of Divisions, Sub-divisions and Distinctions, wherefore I shall omit these niceties and curiosities, and only add this, That as of all Commerce, so also of this part thereof, Equity & commutative Justice must be the Basis, *Æqualitas dati & accepti*, must be its Rule, and honesty must be

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the Artery under this vein of Commerce, without which Traffick cannot subsist, or else whatever Reasons be urged for its lawfulness, and whatever Distinctions be used, it is unlawful, if not curia exteriori, at least foro fori: But alas! it is to be feared, that these things are little observed by those who make it their sole Trade to practise Exchanges. Not but that it is lawful for such as give in Exchange, to consider the lawful Interest of their Monyes, their great Labour and Expences, the Risco that they run, the plenty or scarcity of Monyes or Bills, the Intrinsick & Extrinsick value of the species of Monyes they must pay, and again receive (which things, if not considered, there is no equality) but that which is condemned in Exchanges, (as was said before) is the Extortion and Oppression, and the Abuse of Exchanges, palliating their unlawful Usury therewith. So that whatever may be objected against the lawfulness hereof, may be retorted with this, that they are not vitia artis, but artificis; and let those Bankers that thus abuse a lawful calling, consider, that usually (as hath by some been observed) these great unlawful Gains have been attended with greater Losses, and it cannot well be otherwise; for first, Mala parva, male & cito dilabuntur; secondly, as the Dutch Proverb is, As long as the Covetous man lives, the Deceiver need not dye for hunger; for the hopes of great Gains makes them

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them run great Hazards; and thirdly, their greatest Trade being with (honest) Merchants, whom they credit, these often by divine Providence do suffer great losses, who often run great Risco's at Sea, and so are made insolvent, and if some griping Usurers and Abuses of the lawful calling and art of Exchanges are not concerned, it will be very strange.

That which gives most men an occasion to dislike and disprove of this Mystery of the Bankers, is this, 1st, That they are observed to be men of very broad Consciences, they will pretend Honesty as much as any, but they exercise it a little; and especially, its hard to perswade them that they are in Conscience obliged to remit part of their Debt to him that cannot possibly pay, who not by his own, but by others Knavery, not by his own Folly, but by the Providence of God hath suffered the loss of all that he hath; and then, 2dly, They that are strangers to this Art and Mystery (for so it may well be called) cannot conceive how Moneys (which of its self is barren) should so fructifie, as if there were some Alchymistrical cunning used by them, or as if by Superfaktation they could multiply Moneys; they think it strange, that such men, who in appearance are idle, do nothing but sit and write, dealing in no Commodities, neither by buying nor selling, should so suddainly acquire so vast Estates, and gain more than the most laborious and industrious Merchants: Nor, 3dly, can they

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they understand how *Moneyes*, that is the measure and price of all other things necessary for life, and which for that end only was invented, should be the measure and price of it self, and so be *mensurans & mensuratum, regulans & regulatum*, and they judge it according to their Logical and Philosophical Capacities, that an *actio & passio* in the same subject is impossible.

But these should again consider, to write is not to sit still, or to be idle; and to study, and contrive, and correspond is the greatest labour; as also, that it is only idle *Moneyes* locked up in a Chest, and unmployed, that is unfruitful and barren, and that there is a mixture of *Contracts* in *Exchanges*, and a buying and selling also, and that the profit thereof doth not arise only from the consideration of time (though according to the longer or shorter time the course is higher or lower proportionably) but conjointly from a consideration of the Labour, Expences and Risco of the *Exchanges*, nor do they always gain by *Exchanges*, nor can they that observe the lawful Course of *Exchanges* know certainly that they shall gain; for posito that the men be able and sufficient that they deal with; yet such is the variableness of the Course, that till they have the *Moneyes* in Cash again, which they gave out on *Exchange*, they cannot know whether it be to their loss or profit.

But that which renders this Art of *Exchange* most suspected, is the Practice of *Re-change*, which is doubtless unlawful, and I shall not plead
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For it. But lest I be mis-understood, I will declare what I mean by *Re-change*, and what others take it for; and the Re-change that is condemned, is this, When an honest Merchant, (or other) standing in need of present Money, comes to an Exchanger, and offers him his Bill for so much Money; the Exchanger prying like a Vulture upon his necessity, gives him so much Money, upon good security, at an high Course, and knowing that the Bills will not be paid, but protested, he conditions, that the Interest, Charges, and the course of Exchange back again, shall be added to the Sum, and converted to the Capital or Principal; this augmented Sum is redrawn upon the poor necessitous Debtor; and if the Debtor cannot pay, then the Exchanger will probably continue it so long and so far as the Pledge or Security he hath, is worth, always augmenting the Sum, as before; all which at last he forceth the poor Merchant to pay him, though he utterly ruin him and his whole Family; whence by the way observe, That this Re-change is alwayes with the same Debtor, by converting the Interest into the Principal, and that the Creditor knows, that the Debtors Bills will not be paid, and that therefore many Fictions are admitted of, and that the Creditor doth by violence extort from the poor Debtor, whatever his insatiable avarice shall prompt him to: And thus they cloak their Usurious Contrivings, and ruin the poor Debtor; and this is that Re-change

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that is unlawful. But I shall not enlarge upon these things, lest I swell the Book to too great a Volume.

I shall only here observe, That Exchanges were introduced by the Law of Nations (as all Commerce was) and was invented for the ease in Traffick, and is now so necessary an Appendix thereto, that without it Trade can scarcely subsist, its the soul and life thereof, and is of the very Essence of all Commerce and Navigation. The variety of Coyns, and their Extrinsic and Intrinick Values gave the occasion thereof, and the design was to prevent the hazard and charges of transporting Monyes from place to place to traffique with. But now by the Policy of Merchants, its turned to a most profitable Trade, and its evident enough, that they are now neither Fools nor Prodigals that will for a small piece of Paper or two, give away so much ready Monyes; for those Bills of Exchange they receive do usually bring all back again with Interest; yea, now according to the number of these Bills, men may safely value their Estates; To which purpose Sigism. Scaccia tells a pretty story: “ An Italian Merchant being in company
“ with some Scholars, they were discoursing
“ of a certain learned Person that was shortly
“ expected to come to a certain place, whom
“ highly commending for his learning, they
“ said, he was *Omni licet artium genere imbutus*;
“ of whom presently the Merchant demands,
“ Quas

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“ Quas haberet Literas? To whom they answered, That he was so and so qualified, had Greek and Latine on his Fingers ends, &c. Whereat the Merchant lift up his hands, and said, Is that all? What else should he have? says another. Ho (says the Merchant) if he hath no Letters of Credit, Literas Combij (Bills of Exchange) all the rest is of no value. But not to detain the Reader any longer here, and leave the Book to his pursal and approbation, and I question not, but those that shall have occasion to buy and peruse it, will indeed find that its both useful and necessary for all Merchants, especially for those that are Young.

John Scarlett.

ADVERTISEMENT.

NB, What I have translated for the most part *Remitter*, is by some called the *Deliverer*, in that he delivers Moneys.

And the *Possessor of the Bill* is he to whom the *Bill* is payable.

The *Acceptant* is he to whom its directed.

The *Drawer* is sometimes called the *Taker*.

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THE Stile of Exchanges.

Rules of Exchange.

CHAPTER I.

The Definition and Multiplicity thereof.

Rule I.

THE word EXCHANGE in its largest Signification, may be applied to any kind of Change.

Rule II. In a more restrained and limited sense, it may be referred to all sorts of Traffique whatever.

III. But that kind of Exchange, that here shall be treated of, is yet taken in a more limited

B

mitted

mitted sense, and only referred to a *Trading*
in, or with Monyes.

IV. From the *Variety of Coyns*, and the manifold *distinctions of Monyes* (those Coyns and Allays, that are currant in one Nation, being not currant in another; and yet notwithstanding, seeing almost all the *world* over, all Trade must be driven with Monyes) did this Trade of, and in Monyes (which we call **EXCHANGE**) derive its Original.

V. This *Exchange* is two-fold, *viz.* An Exchanging of Monyes for Monyes, one Coyn or sort for another; and a giving of Money upon Exchange for a Bill, &c. The former of these is Petty Exchange, the latter Real.

VI. The Exchanging of one sort or species for another, is also two-fold; either *with, or without Profit.*

VII. When its done *without Profit*, it cannot be called a *Trade*, but is done meerly out of *Friendship*, and as a *Courtesie*; and then there is an equal and just Valuation of both the sorts of Coyn, according to their Allay, or their Price currant, or *Intrinsic* and *Extrinsic* Value.

VIII. But if *Profit* by the Exchange, be designed

designed by either Party, then one Party allows the other a certain *Profit* upon the certain Species he desireth; and that *Profit* is called by the Italians *Aggio*, by the Dutch *Opsoel*, which we may call *Advance*, or *Use-Monyes*.

IX. But then, this last kind of *Exchange*, which is done for *Advance* or *Aggio*, is no free and lawful Trade, save to those only that are permitted by Authority to use it, who are also obliged to observe certain *Rules* and *Methods* in the use thereof, such are *Brogers*, *Bankers*, &c.

X. And to prevent all *Confusion*, and the too great *Advance* of any particular Species of Monyes, the Cities of *Amsterdam*, *Hamburg*, &c. have erected a *Bank* for the *Regulation* thereof, according to the true *Intrinsic Value* of every Species.

XI. *Exchange* that is done by *Bills of Exchange*, consists in a *Contract* and *Agreement* betwixt two Parties, whereby the one Party gives his *Bill* for the Payment of a certain precise Sum of Monyes, at a certain and limited time, in a certain and limited place, for the value of the same Sum already received, or presently to be paid by the other Party; this is called by *Marius*, *Real Exchange*.

XII. Exchange may again be subdivided, viz. into the *Merchants*, and the *Usurers Exchange*.

XIII. *Merchants Exchange* consists in a Trading in or with Monyes from one Place, City or Nation, to another, upon an uncertain Profit; and this sort of Trade, is by way of Excellency termed, *Simple Exchange*.

XIV. *Usurers Exchange* consists in a giving Monyes upon Interest, with condition to receive the same Sum of Monyes, with a certain Profit, at a certain time, and in the same place; and this is called by *Marius*, *Dry Exchange*.

XV. *Merchants Exchange* is either *actual*, and that which is really performed and accomplished; or only *pro Forma*.

XVI. The *Real Merchants Exchange* consists in a real and effectual Contract and Negotiation betwixt the *Drawer* & the *Remitter*, concerning the *Course of Exchange*, and the *Time and Place of Payment*.

XVII. But that *Exchange* that is only *pro Forma*, consists only in a *Consent*, that the Name of a certain Person be used, as the
Remitter,

Remitter, (that the Bill may want nothing of its Formality) without any real Contract or Negotiation.

XVIII. Again, this *real Exchange* is twofold, either *Certain* or *Conditional*.

XIX. *Real Certain Exchange*, is, when the Sum exprest in the Bill must really and certainly be paid.

XX. But *Conditional Exchange* is, when the Payment of the Sum, named in the Bill, must first be made, upon the arrival of some Ship, or of some certain Goods, or upon some other Conditions.

XXI. To the Compleating of an *Exchange-Negotiation*, four Persons are considered and required, two at the place where the Course, Place, Time of Payment, and the Sum are agreed on, to wit the *Drawer* and the *Remitter*: and at the Place of Payment are also two, to wit, the *Person* on whom the Bill is drawn, who must *Pay*; and the *Person* to whom the Bill is remitted, who must *Receive*.

XXII. *Exchange* is again subdivided into *Negotiated*, and *discounted Exchange*, or *Rescorted Exchange*.

XXIII. *Negotiated*, is, when the *Drawer* and the *Remitter* are two distinct *Persons*, betwixt whom there hath been an *actual Contract* and *Agreement* concerning the *course*, &c.

XXIV. *Discounted Exchange*, is, when the *Drawer* and the *Remitter* is one and the same *Person*, that at the same time *draws* and *remits*.

XXV. *Negotiated Exchange*, is again *two-fold*; either *Pure*, or *Mixt*.

XXVI. A *Pure Negotiated Exchange*, is, when really *Money* is given for *Moneys* to be received, according to the *contract* betwixt the *Drawer* and the *Remitter*, whereby the *Drawer* obligeth himself to pay the value he hath received of the *Remitter*, according to the *course* in another place, at a certain *pre-cise time*.

XXVII. *Mixt Exchange* consists in a *contract* betwixt *Debtor* and *Creditor*, whereby the *Debtor* obligeth himself to the true payment of the *Monyes*, according to the *custom* of *Exchange*.

XXVIII. Again, all *Exchanges* are either

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ther for a *Man's own*, or for some *Principal's* account, or in the *Name of another*.

XXIX. When it is for *Proper account*, it concerns the Person, that is either *Drawer* or *Remitter*.

XXX. When its for the *Principals account*, the *Factor* treats and concludes in his own *Name*, but the *Sum, &c.* is for the *Principals account*.

XXXI. And it is in the *Name of another*, when its done only by the *full Power* and *Letter of Attorney of another*.

XXXII. And lastly; *Exchange* is either *directly to a certain place*, or *indirectly*, and is sent to some *other place* first, to be negotiated.

CHAP. II.

Of the Duty of Mackelers or Exchange-Brogers.

Rule I. **E**XCHANGE is concluded, either by the *Mackelers or Brogers*,
B 4 alone

alone betwixt themselves, or by bringing the Parties face to face.

II. *Brogers*, &c. are Persons Sworn and Authorized by the Magistrate, whose Work and Trade it is, to enquire of Persons that have any Monyes to *remit* or to *draw*, and to agree such Persons concerning the Conditions, acting Impartially between them both.

III. It is their Duty to be *Diligent*, *Faithful* and *Private*, and not to *Cheat* or *Overreach* either the *Drawer* or the *Remitter*, in any wise.

IV. He must be content with that Reward for his Pains and Labour, that the Magistrate hath allowed him, which is called by the the *Hollanders* **COURTAGIE**: He must not exact more of one than another, nor serve any man for nothing.

V. Those *Covetous Exchangers* that will save the *Courtage*, by concluding their own *Exchanges* face to face, without the help of the *Brogers*, or that use to deduct from their allowance, or that will use *Ignoramus's* because they will serve for less than the Allowance, or may be for nothing at all, do sometimes in the Course of Exchange, pay the *Courtage* double and tribble.

V I. A *Broger* must be very diligent and prudent, and must first of all know of the *Drawer* and *Remitter*, to what certain place they will Exchange; and if it be to such a place where there is alwayes a certain *Usance* observed in the Payment of Bills, then he hath nothing to do, but to treat of the *Course* or *Price* of Exchange. But in case they would Exchange to Places, where no certain *Usance* is kept, but the Bills must be made at shorter or longer date or sight, &c. then he must be expreis and certain, as to the precise *Time* of Payment, and other necessary Conditions.

VII. When the *Mackeler* or *Broger* hath concluded with any, then must he tell the *Drawer*, to whom he will have his Bills made Payable, and must thereupon note in his Book, *What the Sum was for which he concluded; What time for Payment of the Bill; To whom it must be paid; From whom the Value must be received; and At what Course the Exchange was made:* Which *Memorandum* he must give to the *Drawer*, that he may accordingly make or endorse his Bills of Exchange.

VIII. Its the *Brogers* Duty also, to fetch the Bills, when they are made, from the *Drawer*, and carry them to the *Remitter*.

IX. He is obliged to keep a perfect and true Register of every particular Bill; and must Note in his Book at home, *Who the Parties were*, as well the Remitter as the Drawer; *To what Place the Bill was directed, and to whom; To whom it was Payable; At what Time; and what the Course was; And the precise Day when this was concluded on.*

X. And in case of any Difference betwixt the Drawer and Remitter, the Word and Register of the Broker, that is of known Honesty, will be the greatest Evidence, and the Best.

XI. No Prudent Merchant will oblige himself to one Broker alwayes, nor prefer one to another, but allow to any of them their *Courtage* (without making any Difference among them) that shall first offer the Course to him, at which he resolves to conclude; By thus doing, he disobligeth none of them, but animates them all to his Service.

XII. Its a great Fault and Abuse for Merchants to *Contract* with the Broker, upon hazard, before the Exchange-time.

XIII. Its a great Imprudence in any Merchant that hath but little Credit of his own, when he hath occasion to draw, to give Orders

Orders to all the *Macklers* or *Brogers* for it.

XIV. A *Broger*, in the concluding of Exchanges, must not use his Liberty, or conclude any thing, either as to the *Time* or the *Course*, without Order.

XV. A *Drawer* hath great reason to be Angry at the *Broger*, when he without his Knowledge, concludes any thing at a lower or disadvantageous *Course*, than he gave order for, though the *Broger* should offer to make good the loss; for his Credit is therein concerned.

XVI. A *Drawer* hath no less reason to be Angry with the *Broger*, if he without his Knowledge or Order, promise the *Remitter* any *Time* for the *Payment* of the Value.

XVII. A *Drawer* is not obliged to make his Bills at shorter *Sight* or *Time*; nor is the the *Remitter* obliged to accept of Bills made at a longer *Time* of *Payment*, or on any other Person than was agreed on by the *Mackler* or *Broger*.

XVIII. Its the Duty of the *Broger* to maintain the Credit and Reputation of the *Drawer*, as much as he can (if it be not contrary

trary to his Kuowledge) But it is not advisable for him to oblige himself for his Sufficiency, which some *Brogers*, for Covetousness of the *Courtagie*, have too late Repented of.

XIX. Unknown Bills of young Beginners, or of those that seldom frequent the Exchange (who may be sufficient enough) a *Broger* may freely offer; but it greatly tends to the Diminution of his Credit, if he ordinarily offer Bills of those that are known to be of little Repute or Credit, especially if he recommend them; yea, it is perfect Knavery in him to draw for any man, whose Bills he knows will not be answered, or remit for any, who he knows cannot pay the Value.

XX. *Brogers* must diligently guard against Lying and Cheating.

XXI. A wise Merchant will not credit again that *Broger* that hath once Cheated him.

XXII. A wise Merchant will not suffer himself by the Insinuations of *Mackelers* or *Brogers*, to be seduced, in hopes of great Advantage, to act any thing contrary to Honesty, or the Laws of the Land.

XXIII. He that by a *Letter of Attorney*,
or

or full Power, will draw in another's Name, is Bound expressly to signifie so much to the *Broger*, and the *Broger* must conclude the Parcel in the Name of the *Principal*, not in the Name of the *Person that hath the Order*.

XXIV. The Merchants, both the *Drawer* and the *Remitter*, will before they conclude finally and absolutely, enquire of the *Broger* of the sufficiency of each other; and it is the *Brogers* Duty to inform them as well as he can.

XXV. When an Exchange is concluded, by the help and assistance of the *Broger*, it cannot be repented of, without the consent of the Party, and the *Brogers* Courtage must be paid him; besides, it reflects upon either of them, to fly from their Words.

CHAP. III.

Of the Course of Exchange.

Rule I. **I**N treating about, or Negotiating of a *Bill of Exchange*, the *Remitter* will seek to conclude for his most Advantage; but the *Drawer* must have respect to his Credit, and not draw, but at an honourable Course..

I I. It is not possible that the *Drauer* should alwayes get the very heighth of the Course, nor are all Bills of one and the same Course; but according to the Plenty or Scarcity of Monyes, or Bills, the Course alters in a little time; wherefore Merchants must be curious and exact in concluding an Exchange.

I I I. When there is plenty of Money and scarcity of Bills, then the *Drauer* may hold hard, and delay to conclude; but if the contrary, and if he must needs draw, let him not neglect nor delay.

I V. In the concluding of a *Bill of Exchange*, if the *Parties* and *Brogers* only treat about the Course, not mentioning any other Conditions, then the other Conditions are supposed to be such, as the Custom of the Place, to which the Bill must be directed, ordinarily allows of, not only in respect of the Time of Payment, and the Species in which the Bill must be paid, but in all other respects.

V. He that will remit or draw at longer or shorter time, or will pay or receive other Species of Monyes, &c. than are usual and customary at the Places where the Exchange is concluded, or the Bill to be paid, he must before he conclude, expressly condition for such things.

VI. *Exchange* is performed either in a *Domestick* or *Forreign Coyn*.

VII. In a *Domestick Coyn*, when the *Bill* must be paid in the same Sort & Species of *Monyes*, that the *Remitter* paid to the *Drawer* for the *Value*; and these are usually *Inland Bills*.

VIII. In a *Forreign*, when the *Bill* is paid in another Species and *Coyn*, than the *Drawer* received; and so are usually all *Forreign Bills*.

IX. In all *Exchanges*, the *Coyns* in one place, as well as another, are Certain and *Immutable*; and the change of the *Course*, either higher or lower, depends upon the *present Value of the Coyn* in the Place where the *Bill* is directed to.

X. It is then called [*Pari*] when *Money* for *Monyes* is *Exchanged*, receiving neither more nor less in *Value*, than the *Value* received was.

XI. The *Drawer* is said to *Exchange* with *Advantage*, when he concludes for a *Course* that is above [*Pari*.]

XII. The *Remitter* is said to *Exchange*
with

with Advantage, when he payes the *Drawer* less than the [*Pari.*]

XIII. He that remits his Monyes, in hopes of Advantage, doth not always advance by his Remises.

XIV. The Exchange of Monyes from *London* to *Antwerp*, *Amsterdam*, *Rotterdam*, &c. is made upon the Pound Sterling of 20 s. viz. they give so many Shillings Flemish for a Pound Sterling; *Hamborough* the same.

The Exchange from *London* for *France*, as *Paris*, *Roan*, is valued on the *French Crown*, i. e. so many Pence Sterling, for the *French Crown*.

The Exchange to *Venice* is made upon the Ducat; and to *Lagornie* upon the Ducat Piece of Eight.

XV. The *Pari* of the *Netherlands*, with the Pound Sterling, is, 33 s. 4 d. *Flemish*. Of *Hamborough*, with the Pound Sterling, 32 s. *Flemish*, or four Dollars. Of *France*, 72 *Soulz*, or 6 s. Sterling. The *French Crown* of three *Livers Tournois*, the *Liver* reckoned at 2 s. Sterling, and every 10 ¹/₄ *Soulz* for 12 d. Sterling. Of *Leghorne*, 54 d. per Dollar, or piece of Eight. Of *Venice*, 51 d. Sterling per Ducat.

The *Pari* between *Antwerp* and *Paris*, or *Holland*

Holland and France, is for the *French Crown* of 60 *Souls*, or 3 *Livers Tournois*, 89 $\frac{1}{2}$ gros of *Amsterp*, which is the true value of that *Crown*.

CHAP. IV.

Of the Reduction of Exchanges.

Rule I. **T**HE Value of a *Bill of Exchange* is reckoned by reducing the known into the desired Sum of Moneys, according to the Course agreed upon.

II. In Exchanges, sometimes the Conditions are for Moneys of one and the same Denominations and Species, and sometimes of different.

III. When Exchanges are made for Moneys of one and the same Denomination and Species, then usually the Contract runs at so much the Hundred either Profit or Loss.

IV. And when it is thus concluded on, then it is certain, that as much as the one gaineth, the other looseth upon every Hundred.

V. When an Exchange is concluded for Moneys of different Denominations, then the Course is made sometimes in a *Domestick*, sometimes in a *Forreign Denomination*.

VI. To calculate the *Pari* of an Exchange, in drawing and remitting (*na Ravaglie*) at a certain limited Price, this only is to be observed, that when we are forced to draw at a disadvantageous Course, we must remit at so much the more proportionably advantageous Course; and when we cannot remit, but at an Unprofitable Course, we must see to make so much the more Profit by the Draught.

VII. If any order his Correspondent to remit Moneys to another place, where he hath occasion for it, and to draw the Value upon himself, and will calculate to how much the Remise will stand him, he must add to the Principal Sum, the Provision for his *Factor*, and Courtage for the *Broger*, which is, for the *Factor*, half *per Cent*, for the *Broger*, one *per Mille*, usually.

VIII. If any will calculate whether it be more profitable to order his Correspondent to draw upon him directly, or by some other way indirectly and about, he must also consider,

consider, that he hath both *Provision* and *Courtage* to pay to his Correspondent, whom he orders to accept, in case he be ordered to Revalue the same; but if he remit to his Correspondent, then there is only *Provision*, and no *Courtage* due; yet the *Courtage* must be considered in the *Calculation*, because the *Principal* himself hath paid it.

I X. If any will calculate, whether it be more Profitable to let his Effects be remitted directly, or by some other wayes about, he must observe, besides the *Calculation* and Equalling of the respective Courses to and fro, if the Remises are not made directly to himself, that he hath double or tribble *Provision* and *Courtage* to allow, and will lose a considerable time before he get his Moneys; but if the Remise be direct, or he himself, draw his Moneys in, he hath but single *Courtage* and *Provision* to pay or allow.

X. To calculate the Profit or Loss of a remitted and a redrawn Remise, the Profit must be diminished, or the Loss augmented, with double *Courtage*, viz. *for the Draught*, and *for the Remise*; and when any will calculate what is lost or profited by a Remise, that is now returned, or to be returned, they must from the Sum remitted, that is else-where to be received, subtract the *Provision* and

Courtage, and the Remainder is the *Apoinctee* (the *Net Sum*) which must be reduced according to the Course of Exchange; and then they have the Product of the Rechange: Let this be compared with the Sum that was first remitted, having added the Charges thereof thereto, and then it will easily appear, what the Profit or the Loss was by that Negotiation.

XI. In Calculating, according to Proportion, how much by the hundred is gained or lost by Exchanges in a Year, in Remises, we cannot alwayes strictly account of the time, seeing its seldom that the day of Payment, and the Expiration of the Term of the Bill meet together, nor can the Moneys received be alwayes again remitted the same day; but in drawing, the Time may be precisely accounted of and calculated, because Draughts most times, before, and at farthest, on the last day of the Term are again Re-valued.

XII. If a *Factor* be drawn upon, with order to re-draw the Value again on the Principal, or else-where, he must charge the Value of the Draught with his Provision and Courtage, and the Product is the *Net Sum*, that he must charge him with. On the contrary, when a Factor hath Moneys remitted to him, with orders to remit the same to some other Place,

Place, he must from the Sum remitted, deduct his Provision and Courtage, and the Remander is the *Neat Sum*, that he must remit. So also, when a Factor is ordered to remit to one Place, and to value on another, he must first remit, and then to the Sum remitted, add his Provision and double Courtage, and then he receives the Sum he disbursed. But if he first have drawn a certain Sum, and then will reckon how much he hath to Remit, then he must from the Sum drawn, deduct his Provision and double Courtage, and the Remander is the *Neat Sum* that he must Remit; which Sum, if the Exchange be made in a Forreign Denomination of Coyn, must be reduced according to the Course agreed on, to the Value of that Coyn that must be exprest in the *Bills of Exchange*.

XIII. Provision must as often be reckoned in the Calculation, as it is Exchanged or Remitted, or turned over; but the Courtage is allowed to no Factor, unless he do actually Negotiate the same, either by Drawing or Remitting.

XIV. In Calculating the Charges of Bills of Exchange, that are protested for Non-Payment, the Course of the Re-change is reckoned, as it were, the Day, or the Post day after or before the Bill of Exchange was protested,

Protested, at the Place where it was protested, to the Place whence it came, at sight, and to the Sum is added, half *per Pound* for Provision, one *per Mille* for Courtage, the Charges of the Protest, and the Postidge of Letters.

CHAP. V.

What a Bill of Exchange is, and what the Drawer before the Delivery thereof, and the Remitter, before the Receipt thereof, must narrowly observe.

Rule I.
THe *Drawer* is obliged to give to the *Remitter*; Bills for the Sum Negotiated.

II. The *Drawer* ought to observe, before he subscribe the Bill, at least, before he part with it, and the *Remitter* before he receive it, at least, before he send it to the Post, or if he redraw the Value, before he endorse it, or part with it out of his hands, if it be well and truly made, and all the necessary Requisites fully express in it.

III. A Bill of Exchange is an obligatory Writing, containing, (1.) a Time When, (2.) the Place Where the same is dispatched, (3.) the Sum, (4.) agreed on, and ordered, (5.) at a certain Day, (6.) To whom it must be paid, (7.) From whom (8.) the Value is received, (9.) subscribed by the Drawer, with a Supercription (10.) to him that shall pay it, and satisfy it, and (11.) the Place where it shall be satisfied. These are the Requisites of a Bill of Exchange.

IV. 1st, Both the Parties must observe, that the Bill be rightly dated and clearly exprest.

V. 2^{dly}, That it name the Place where it was made and concluded on.

VI. 3^{dly}, That the Sum be exprest so clearly, both in Words and Figures, that no Exceptions can be taken against it.

VII. 4^{thly}, That the Payment thereof be ordered and commanded.

VIII. 5^{thly}, That the time of Payment be not dubiously exprest, nor neither sooner nor later than the time agreed on.

I K. 6thly, The *Remitter* must especially observe, that the Name of the Person to whom Payment must be made, be well and truly Spelled; or if it be made to his Order, that those words be clearly writ.

X. 7thly, 8thly, He must also observe if his Name be therein, and the Value of him be exprest.

XI. 9thly, He must observe, that the Bill be under-writ by the *Drawer*.

XII. 10thly, The *Drawer* must principally look to the Direction and Supercription of the Bill, that it be well and truly made, and directed to the right man.

XIII. 11thly, They must both observe, that the Place wherein the Payment must be made (and the Coyn or Species wherein it must be paid) be fully exprest in the Supercription, or in the Body of the Bill: And if a *Drawer* draw upon one that lives not at the place where the Payment must be made; then must the *Remitter* observe, that as well the Place where the Person that must pay dwells, as the place where the Payment must be made, be exprest.

XIV. Here follows the Form of a Bill of Exchange.

Tork, April 23. Anno 1680. pro 1000
Rixdollar Specie.

“ A T Ufance, Pay this my first Bill of
“ Exchange (my second, of the same
“ date, being yet Unpaid) to Mr. N. W. or
“ his Order, the Sum of One Thousand specie
“ Rixdollars, the Value received here of Mr.
“ C. K. Make good Payment, and place it
“ to Account, according to Advice from

To Mr. N. C. Merchant } Sir, Yours
1. a in Hamborough. } J. S.

XV. Sometimes it falls out, that but one *Sola* Bill of Exchange is made for one Parcel, but ordinarily, especially when the Places are of any considerable Distance, two, and sometimes three must be made, and the first is called *Prima*, the second, *Secunda*, &c.

XVI. A Remitter deals imprudently when he requires or accepts of one *Sola* Bill of Exchange for one Parcel, though it be to be paid upon sight, if the Place of Payment be of any Distance considerable, from the place where the Contract was made.

XVII.

XVII. The *Drawer* is obliged to give the *Remitter* as many several Bills of Exchange as the *Remitter* desires, and to proportion the Sums, according as the *Remitter* requires; on the contrary, the *Remitter* is obliged to receive as many Bills from the *Drawer*, and to furnish him with so much Moneys as the Sum agreed on will amount to.

XVIII. The *Drawer* deals imprudently when he makes more Bills of Exchange than one, for one and the same Sum, and of one and the same Import. And in case the *Remitter* require of him thus much, then let him make one Bill for the Sum the *Remitter* desires, and let him for the other Sum make two Bills, all amounting to the desired Sum, *i. e.* If the *Remitter* would have two 500 Dollar Bills at one time, let the *Drawer* make one 500 Dollar Bill, and divide the other 500 Dollars into two Bills.

XIX. The *Drawer* must especially observe, that for one and the same Parcel of Moneys, he make not two *Prima's* or two *Secunda's*, but he must observe to distinguish them clearly, as well in the Body of the Bill, as on the Supercription.

XX. Its Prudence in a *Drawer*, when the
Remitter

Remitter requires a *Secunda* Bill, &c. and the *Drawer* is not certain whether he hath given him a *Secunda* or not, to make a Third or *Tertia* Bill instead of a *Secunda*, and so instead of a *Tertia* a *Quarta*, &c.

XXI. The *Drawer* must also observe, that all the Bills that are for one and the same Parcel, must bear one and the same date, and must be in every respect alike; only with this difference, that one is the *Prima*, another the *Secunda*, &c.

XXII. A *Drawer* may direct his Bills to whom he pleaseth, that hath Authority, and is obliged to accept them, and by the acceptance obligeth himself, yea, on his own Servant, whom he maintains abroad.

XXIII. A wise *Drawer* will make no Bills payable at sight, nor at so many Dayes, Weeks or Moneths after the sight.

XXIV. Neither shall he, if he can any way void it, make any Bills payable to him, on whom he draws, unless he be abundantly satisfied of his Sufficiency and Faithfulness.

XXV. The *Drawer* is obliged to accommodate the *Remitter*, by altering the Bills when he requires it (though already made according

according to his order) either by dividing the Sums, or making them payable to another, in case no man else hath endorsed them, if the *Remitter* will be at the Charges of Postidge of the Letters, &c. but if the Bills be accepted or endorsed, the *Drawer* must be very cautious in altering any thing.

XXVI. A cautious *Drawer* will be careful to change or alter in both or all the Bills, what he changeth or altereth in one.

XXVII. No *Remitter* is obliged to receive any Bills from the *Drawer*, which are made payable by the *Drawer* himself, except at the great *Marts* and *Fairs*.

XXVIII. When in the concluding of a Parcel, the Broger expressly promiseth to the *Remitter*, that the *Drawer* shall deliver him Bills, that are drawn, endorsed or accepted by a known sufficient man; then the *Remitter* is not obliged to receive the *Drawers* own Bills, nor unaccepted Bills, nor any other Bills that are only endorsed by the *Drawer*.

XXIX. A *Remitter* must be cautious in accepting or receiving of accepted Bills of Exchange, which are made payable to the Order of the *Drawer*, and endorsed by him, unless he knew the *Drawer* to be sufficient.

XXX.

XXX. He must also be cautious of receiving Bills that are made, drawn or accepted by a known sufficient man, whose Hand-writing he knows, if the Endorser or the Drawer in of the Value be an unknown Man.

XXXI. A Remitter that must have Bills Payable at sight, is not obliged to receive Bills whose term of Payment are nearly expired, or will in probability be expired before the Bills can arrive at the place of Payment; and if he be blameable at any time for this, its then most of all, when he knows the Post is very uncertain, by reason of the badness of the wayes, or other Inconveniences, unless the Drawer will sufficiently warrant and ensure him, though Payment should not be demanded before the Term was wholly expired.

XXXII. *Marin*'s Advice is, that the *Drawer* when he hath made his Bill, should make the Direction on the inside of it towards the left Hand, that there may be more room for Endorsment, and for a Receipt or Acquittance.

XXXIII. He adviseth also, That if it can well be avoided, that never any Bills should be made Payable to the Bearer, nor to any one Person, naming his Name (but *To him, or his Order*) for both these wayes are dangerous.

XXXIV

XXXIV. The same *Marius* adds a Case, which I believe seldom happens, viz. That both the *Drawer* should forget to direct, and the *Remitter* not take notice that such a Direction was wanting, yet in this case he sayes, If the *Remitter* advise his Correspondent, on whom it was drawn, the Possessor may demand Acceptance, and in Case of Refusal, Protest, and recover the Charges of the *Drawer*, against whom he Protels; yet in this case also, if the Acceptant have a Letter of Advice, desiring him to accept, and he have in hands to answer with, he may safely accept, though the Bill be not directed; but the *Drawer*, for his Error ought to be Corrected, and that by a Protest.

CHAP. VI.

Of Placing Bills of Exchange to Account.

Rule I.

Every Individual, that is concerned in a Bill of Exchange, is obliged to place so much to Book as he is concerned in it.

I I. A Drawer must place to Book exactly and distinctly the Contents and Circumstances of every Bill, before he make the Bills, or at least, before he deliver them to the Broger or Remitter, he must note, *The Day When, The Place Whither, The Persons, By Whom, and To Whom Payable, For Whose Accounts, From Whom the Value, The Time when to be Paid, The Sum, and the Course, &c.* that so, if at any time second, third or fourth Bills should be demanded, they may all of them be made alike.

I I I. The Remitter should as soon as he receives the Bills, place them to Book, at least, before he pay the Value to the Drawer, whether he effectually Remit, or design to Redraw the Value again.

I V. When the Remitter receives not the Drawer's own Bills, but Bills endorsed by him, he ought narrowly to observe, *What Date they bear, From What Place they come, and By Whom they were first made, The Sum they are for, and When to be Paid, and To Whom to be Paid, The Course that he agreed upon, and To Whom the Bill is Endorsed;* and then it will manifestly appear to him, if there be any Deceit or Abuse in the Endorsing of it, or any other Defect.

V. The Drawer and Remitter should also in some convenient place in the Book, note the *Mackelers* or *Brogers* Name to every Parcel, that in case of any Dispute or Inconveniency (as also the better to account with the Broger) they may know with what Broger they concluded.

VI. A Remitter that does not effectually Remit, but designs his Moneys to be Redrawn, and therefore orders the Bills to be made Payable to himself, or Order, would do well, at the side, or under every Parcel, to express the very Day of Payment, and besides, leave the space of an Inch or more, that so he may note under it, *When he Redrew it, or Transported it, To Whom, and By Whom Endorsed, and From Whom the Value, &c.*

VII. When the Remitter sends his Bill to any, to demand Acceptance, he ought to note, near the Parcel entred in his Exchange-Book, *When, and To Whom he sent it, and When he receives it again accepted;* then may he cancel the former.

VIII. And when Bills are sent to any, to procure Acceptance, with order to detain them, till the same, with the Endorsed, be demanded, this ought also carefully to be
Booked;

Booked; and he that receives such a Bill should also observe, and note, *From Whence he received it, and To Whom he delivered it*; he ought also to observe, *The Day of Payment*, that in case the second or endorsed Bill come not in time, he may by Virtue of the accepted Bill sollicitate the Payment, by offering sufficient Caution to the Acceptor, or (*Namptiferen*) desire him to pay the said Moneys to the Magistrates, by them to be kept, or protest in case of Refusal.

I X. So soon as any receives a Bill of Exchange, at least, before he demand Acceptance, he ought to Book it, and Note, *From Whence it came, By Whom brought, For Whose Account, In Whose Letter, Of What Date, For What Sum, By Whose Order, When, and to Whom Payable*; and in like manner, when it is an Endorsed, or a Re-drawn Bill, he must observe, *When and Where it was first concluded, and How, and by Whom it came Endorsed to him*; and if the Parcel were remitted to him for his own Account, he must note the Course it was done at, and for how much he must Credit his Correspondent for it.

X. When the Letter of Advice expresseth, That the Bill is to be paid to the Remitter, or his (or any other Order) the *Acceptant* ought to leave a space in his Book, where he notes

the Parcel to note, by whom it was presented to be accepted, and when the Payment must be made: If he find Endorsement upon Endorsement, before the Payment be made, he ought to specify all the Endorsements in his Books, besides the Parcel, one after another, till he come to the Person to whom the Payment is made.

X I. The *Acceptant* ought also curiously to observe, and note under the Parcel, that, and when he accepted the Bill, that if the *Drawer* hath been negligent or mistaken, and hath made two or more divers Bills of the same Tenure, for one and the same Sum payable to order, the *Acceptant* may be cautious in accepting, and must not only note the Endorsements, if any be found on the Bills that are presented for Acceptance, but also narrowly observe, whether he accepted the first or the second Bill, and note it in his Book, lest he should accept two divers Bills for one and the same Sum.

XII. The *Acceptant* should, so soon as he gets Advice, that his Correspondent hath drawn upon him, note the same in his Memorial, viz. *From What Place, By Whom, What Sum, What Date, At What Time, and To Whom, or Whose Order the Bill is made Payable*; and so in case the Bill be for his own account,

account, he must note in his Book, *The Course it was drawn at, and the Sum for which he must Debit him;* and this he should do, *extempore*, not waiting till the Bill be presented for acceptance, or Payment be demanded.

XII I. Though it be not absolutely necessary, yet it is not reproveable, if the Person on whom a Bill is drawn, should note in his Memorial, even those Bills that he suffers to be protested for Non-Acceptance; but then he must also add, that he suffered them to be protested for Non-Acceptance.

XIV. He that hath a Bill of Exchange in Possession, which was not accepted, or not at the due time paid, though it was accepted, and so is protested for Non-Acceptance or NonPayment, must also note in his Memorial, underneath the Parcel, *When, and to Whom he sent the Protest, with or without the Bill of Exchange.* And so, in case a third Person, or he himself accept, and pay the same Bill, in honour of the *Drawer*, or of any of the *Endorsers*, he ought diligently to note, and observe the same in his Memorial, with all the Circumstances.

XV. He that doth not Voluntarily, but *supra protest*, in honour of the *Drawer*, or any other Person, accept and pay a Bill, must

at the entring of the Parcel to Book, note, *For Whose Account he accepted the same*; and so when the Bill is drawn in, not on the *Acceptant*, but on some other that suffered it to be protested, the *Acceptant supra Protest* must make a perfect and compleat Entry thereof, as if the Sum had directly been drawn upon him, to wit, *When, By Whom, What Sum, To Whom, At What Time Payable, and On Whom it was drawn*, and that he *accepted the same supra Protest, in honour of the Drawer or some Endorser*.

XVI. If a Bill be made payable some time after sight, or at Usance (if Usance be reckoned after sight) the *Acceptant* and the *Possessor* of the Bill, must enter in their *Memorials*, the date of the *Acceptance*, to calculate the day of *Payment* by; and it is a good and laudable Custom in all Merchants, as well *Acceptants* as *Possessors* of Bills, to enter underneath, or at the side of the Entry of the Parcel, the day of its being due, whether the Bill be payable after sight, after date, or at usance.

XVII. If any receive Advice from his *Factor*, that his *Factor* hath drawn or remitted for his account, to some other Place, the *Principal* should also note in his *Memorial*, and distinctly specify, *By Whom, From Whence,*
To

To What Place, When, What Sum, As What Course, To Whom the same was remitted, or on Whom drawn, By What Letter, and of What Date he had Advice thereof; and when he gets further Confirmation thereof, he must curiously observe, if the first and second Advice agree, or not.

XVIII. So also, when any draws or remits, or is drawn on, or remitted to by his Correspondent, by order of a third, for account of a fourth, he also must in his Memorial, specify all at large, that the Book-keeper may know whom to debit, and whom to credit in the Journal.

NB, The Entries that are here spoken of, in all the fore-mentioned Cases, are not to be understood of a formal Journal, or ledger Entry, but only of a plain Entry into the Waste-Book or Memorial, either by the Merchant himself, or any of his Servants. And from all this appears sufficiently, that a Merchant ought to be a diligent and careful Writer.

XIX. If any draw on his own account, upon time, or remit, or order to be drawn or remitted on, or to his Correspondent residing in some other place, he ought to enter in his Memorial, When the same is Payable, that against that time he may make necessary

Provision for the Payment, or to order the further Disposal of it, and to credit or debit his Correspondent for the same in his Account current.

XX. He also on whom is drawn, or to whom is remitted, should enter in his Memorial, *The Time of Payment, To Whom, For What Bill, What Sum must be demanded, or be paid*; and so when the Bill is made payable to order, the same must be exprest, that the Possessor of the Bill, against that time, may advise the Acceptant, to whom the Bill is to be paid, or the Acceptant enquire, to whom its payable by the Possessor.

XXI. When a Bill of Exchange is to be entred into the Journal, the Book-keeper must be careful to find out the true Debitor and Creditor; and if the Bill be for anothers account, he need but enter the same, that he receives in that Species, or denomination of Moneys, wherein he keeps his Books; but if the Bill be for his own account, then the Product must not only be entred in the Species and Denomination of Moneys, wherein he keeps his Book, but also in that Coyn and Species wherein he keeps an Account with his Correspondent; and in the posting of the same into his great Book, or Leidger, the Forreign Coyne must be duely exprest

express in the Factors; *My Account* current by him in the Lines, and the Domestick Coyns or Species in the places appointed for them, that so when he receives an account current from his Factor, he may readily without returning to his Journal, compare every Parcel.

XXII. It is a great error in some, when they have negotiated Bills for their own accounts, to credit their Correspondent instantly for the sums they have drawn or remitted upon time, as also for the principal to credit or debit the Correspondents account current, when the Correspondent hath drawn or remitted for his account, on time, so soon as he receives advice of its being done, though the Moneys is not to be paid or received till some Weeks or Moneths be expired; for thereby the account current, which should alwayes be clear and demonstrative, and shew how the account stands with the Correspondent at all times, is rendred very obscure and confused; wherefore it is necessary that the Book-keeper enter all Parcels and Bills for proper Accounts, in a general entry, under the Title of *Exchange Accounts*, or some other convenient Title, and at the time of their being due, or when the Moneys is really received or paid, then to transport them to their proper places. But if the

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Bills

Bills be remitted or drawn for anothers account, then no entry need be made in the Journal at all, till the time of their being Paid or Received, and then is the Correspondent's Account currant to be credited or debited accordingly,

XXIII. *Marin*'s advice is, not only to note in a Book the Name and Place of abode of him that presents a Bill to be accepted, but also to keep Copies of the Bills that he accepts, and also adviseth him that gets the Bill accepted, to keep a Copy thereof. But I can see no necessity hereof, if all Circumstances be so particularly exprest in the Book.

CHAP. VII.

Of Letters of Advice, &c.

Rule I.

EVery individual Person, that is any way concerned in a Bill of Exchange, must be very prompt, exact and quick in advising or returning of Answers.

II. Above all things, its the duty of the *Drawer*, without delay, by the first Post, to give his Correspondent, on whom he draws, advice

advice thereof, that the Bill be not presented for acceptance, before he hath advice thereof.

III. The Letter of advice must be full and clear, containing all the Circumstances of the Bill, as *the Date, the Sum, for whose Account, to whom Payable, and of whom the Value.*

IV. If the Draught be for the account of the Drawer, or of a third Person, and not for account of the Acceptant, it is not necessary that he advise the Acceptant of the course, seeing the Sum to be paid is exprest in the Bill, in the denomination and species of Moneys that is well known at the Place where payment must be made; but if the sum to be paid, be exprest in a Foreign denomination of Moneys, then is it absolutely necessary to advise of the course, according to which the Reduction must be made, as well as of the Sum drawn, let the Draught be for whose Account it will.

V. The Drawer's Letter of Advice to his Correspondent, on whom he draws, should desire him to take notice thereof, and to honour the Bill, when presented with Acceptance, and when demanded with punctual Payment, and to Debit him for it, or to seek his Re-imbursment, if he draw for a third Person,

Person, of him that gave the Order for his Acceptance of it.

V I. Its also usual for the Drawer by the following Post to confirm the Draught, &c. and if the Bill be at short sight, and for a considerable Sum, he would do well to give Advice thereof as many divers wayes as possible he can.

V II. He that Remits must also give his Correspondent punctual Advice, *For whose Account he Remits, what Sum, in whose Bill, of what Date, and when Payable.*

V III. If the Bill be not yet accepted, the Remitter should desire him to whom he remits, to procure the Acceptance, and for refusal to observe the Custom of Exchanges, *i.e.* to Protest.

I X. If the accepted Bill be in the Hands of any (at the place where payment is to be made) that demanded Acceptance, and the unaccepted endorsed Bill doth not mention in whose Hands it is, then the Remitter ought in his Letter of Advice, to give notice by whom the accepted Bill lies.

X. The Remitter must be careful to send his Bills to those that will demand Acceptance,

tance, and advise him to whom they are made payable, or endorsed, and should be careful to inclose such Bills to no other, but to him that must demand Acceptance.

X I. If the Remitter receive two Bills together (i. e. *prima & secunda*) for one and the same Sum, he must not inclose them together in one Letter, nor send them in divers Letters by one Post; but send the one by one Post, and the other by the next, that if one miscarry, or fall into wrong Hands, the other may be secured and sent to the true Correspondent, to demand Acceptance and Payment.

X I I. If the Remitter hath but one single accepted Bill, or if the accepted Bill remain at the place where it ought to be discharged, and so the Remitter hath but one Bill to send, then its necessary that the Remise be confirmed by the following Post, and clearly and fully exprest in a Letter of Advice, that if the Bill should miscarry, the Person to whom it was remitted, may by virtue of the Letter of Advice make his Address to the Person, who should have accepted and paid the Bill, and forbid him to pay any such Bill to any Person but himself; and if none appear before the Day of Payment, he then may demand Payment of it by virtue of the Letter.

Letter of Advice, and perswade him to pay the Moneys to him upon caution, &c. or on refusal hereof, Protest against him.

XIII. A Remitter or Drawer, for the account of a third, must also give punctual and full Advice to him for whose Account a Bill is drawn or remitted, adding also the Course, and for how much he hath Debited or Credited his Account.

XIV. Its the Duty of the Acceptant, to return an Answer to the Drawer, whether he will accept of the Bill, when presented, according to the Letter of Advice he hath received; and if he make any difficulty about the Acceptance, he ought speedily to give the Drawer advice thereof, and not to wait till the Bill be returned with Protest.

XV. He that accepts a Bill *supra* Protest, whether it be the first designed Acceptant or not, he must speedily, without delay, give advice thereof to him in whose honour he accepted it, and send him therewith the Protest.

XVI. If the designed Acceptant accept it but *supra* Protest, its not necessary that the Possessor of the Bill advise the Remitter thereof; but if the Acceptance be made by another

another, then its best to advise him, that it was accepted *supra Protest*, and by whom.

XVII. He on whom is drawn, for the account of a third, must also give an account to him for whose account it is, *By whom, What Sum, and at what Time Payable is drawn upon him, and whether he hath or will honour the Bills for his Account or not.*

XVIII. The Person to whom is remitted must also advise him, *For whose account is remitted to him, of the Remise, and of the necessary Circumstances; and whether the Bills are or will be accepted or not.*

XIX. If no punctual Advice can be given, whether the Bills will be accepted or not, because the Acceptant is abroad, lives not in Town, cannot be met with, or is suspected, and cannot be found, &c. the remitted ought to give Advice hereof to the Remitter, and to him for whose account it is; and if afterwards it be accepted, he must advise them both, *That it is accepted*; yet this last Advice may be spared, if the first Advice be full and clear, expressing, *That Acceptance will be demanded*; and if not accepted, *The Persons concerned may expect to hear of a Protest*; so that if the next Post bring no Protest, they may both conclude, that the Bill is accepted.

XX.

XX. If a Bill be not accepted, but protested, then the Protester is obliged to give Advice thereof to the Remitter, without delay, and should send him the Protest. And in case the Bill be payable to order, and comes Originally from some other place, than whence he received it, the *Protester* doth act prudently, if he advise the first Remitter thereof.

XXI. When a Bill is discharged and satisfied, for whose account soever it be, its the Duty of the Payer and Receiver, each of them to advise those that are concerned therein, respectively, except the Draught or Remise be for the account of the Acceptant, or the Remitted, then its not usual, though very convenient it would be, to give advice of the Discharge thereof.

XXII. If any give order to draw upon a third Person, for his account, he ought at the same time to advise the third Person, *That he hath given such order, and to whom, and for what Sum,* and desire him to accept the Bills of his Correspondent; and signifie to him, *how he must place it to Account,* or be *Re-imbursed,* by redrawing, &c. This he must do, lest the *Bills* be drawn before the third Person have order from the Principal to accept them.

XXIII,

XXIII. He that is fore-advise'd, that he will be drawn upon, ought instantly to return an Answer, whether he hath taken notice thereof, and will accept and honour the *Bills*, or not.

XXIV. In like manner, if any give order to another, to remit for his account, to a third, he must also advise the same third Person, before the Remises come to his hands, that he hath given such orders (especially if the same are to be made at short sight) and how he will have them disposed of; and its the Duty of this third Person to return an Answer, *That he hath received, and will, or will not observe his orders,*

XXV. If a Factor, Correspondent, or Principal, &c. advise his principal Correspondent or Factor, *That he will accept such and such Draughts, for such and such Accounts,* but afterwards refuseth to accept those *Bills*, and returns them on the Drawer with *Protest*, it is but just and equal, that he that promised acceptance, and refused it, should be oblig'd to make good all the Loss, whatever it be, and make satisfaction for the Damage done to the Credit of the Drawer.

XXVI. If the *Letter of Advice* disagree with

with the *Bill*, in respect of the Sum, or the Sum exprest in Figures in the *Bill*, with the Sum exprest at length in the body of the *Bill*, yet that sum is to be followed that is exprest at length, according to *Marin* his Advice; and if the Acceptor will not accept for that Sum, the Possessor may and must Protest.

CHAP. VIII.

Of the Payment of the Value by the Remitter to the Drawer.

Rule I.

IN Exchanging, Credit must be given; but the *Drawer* had need observe to whom he gives credit, that he give not his Bills to him that cannot or will not pay the value; and the *Remitter* had need observe, whom he credits, that he give not his Moneys to one that cannot or will not pay the Bills: so that the one as well as the other, must be careful, and enquire into each others Sufficiency.

II. *Bills* are sometimes given by one, who himself will discharge them; sometimes are charged on a Debtor, who is to discharge them: Whereof afterwards shall be spoken.

III. The value of a *Bill* is ordinarily paid in ready Moneys; and if the Drawer be satisfied with any thing else, it is reckoned for, and as ready Moneys.

IV. All *Bills of Exchange*, that are negotiated or concluded at *Amsterdam* or *Hamborough* (or any other place where a *Bank* is erected) are payable in Bank, if they exceed a certain limited Sum, upon Penalty, that such *Bills* exceeding that Sum, not paid in *Bank*, shall be adjudged as not satisfied, and of forfeiture of a certain Sum to the Bank, besides by those that act contrarily; nor must the *Brogers* suffer themselves to be employed about any *Bills* exceeding that Sum, to be payable out of *Bank*, or to act any thing to defraud or evade the said Statute and Order, by dividing the sums and lessening them, that they may be made payable out of *Bank*, upon penalty of incurring the hazard of being suspended and deprived of their Office and Employment.

NB, It is but reasonable and equal, that in all places, where a *Bank* is erected, all *Bills* should be paid in *Bank*; and so long as there was no difference betwixt Bank and Currant Moneys, this order was observed at *Amsterdam*, &c. but in regard now at *Amsterdam*, &c. there is three or four in the hundred dif-

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ference betwixt Bank and Currant Moneys, in respect of the Value, therefore it is scarce practicable now for Merchants and Shopkeepers to observe this order, especially for those that have their Correspondence in the chief Cities of *Holland, Westphalia, in Sweden, Denmark*, or other places on the *Baltique Sea*, seeing all Bills to those places are concluded for, and in currant Moneys, because those that are Inhabitants in other places, are only indebted to their Creditors in *Amsterdam* currant Moneys, and do know of no *Aggio* or *Up-Moneys*, and would alwayes suspect to be cheated or over-reached, if any thing of this nature should be imposed upon them; but by erecting a Bank currant, this inconvenience might be prevented.

V. Notwithstanding, that ordinarily in Bills of Exchange, its said, that the Value is received already, yet ordinarily the Value is not paid by the *Remitter* to the *Drawer*, till two or three dayes after the Delivery of the first *Bill*, and may in time enough be paid by the *Remitter*, at any time betwixt and the next Post.

V I. But a *Remitter* must not, cannot delay the *Drawer* any longer than till the next Post, unless it were expresly conditioned, that some time should be given for the Payment of
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the Value; if he do, then may the *Drawer* forbid the Payment of his *Bills*, and demand satisfaction of the *Remitter*.

VII. If a *Remitter* condition for time, for the Payment of the Value, till he hath advice of the Acceptance of the *Bills*, then is it necessary that he make those conditions with the *Drawer* himself, and not relie on the Mediation of the *Broker*.

VIII. If a *Remitter* hath conditioned, not to pay the Value, till he hath advice of the Acceptance, he is (if the *Bill* be protested for Non-Acceptance) not obliged to pay the Value; but if it be accepted, though but by one, whose sufficiency is suspected, yet he is bound to pay the Value.

IX. The Payment of the Value of a *Bill*, drawn by *A.* as having a Procuration or full Power from *B.* must not be made to *A.* but must in *Bank* be writ to the account of *B.* as the Principal *Drawer*; and *A.* must be obliged to make his full Power appear, and so in the Name of the Principal must receive the Value, and discharge the *Remitter*.

X. A prudent *Remitter* will not pay the Value of a *Bill*, but upon an Assignment or Acquittance from the *Drawer*, expressly signifying,

ying, *That the same is in Payment of the Value of such a Bill*; and this is to be observed as well in the Payment by *Bank*, as in *currant Moneys*.

XI. A prudent *Remitter* will not offer to pay by *Cash*, or in *currant Moneys*, what he is obliged to pay in *Bank*, without *Acquittance* or *Assignment*, because such Payment is not satisfactory, and contrary to order.

XII. If the Value of a *Bill*, either in *Bank* or *Currant Moneys*, be paid to the *Drawer*, by any other than the *Remitter*, for the *Remitter's* account, or by his Order, in case it appear not that such Monyes is paid to the *Drawer*, upon the *Remitter's* account, and by his order; the *Drawer* would act very cautiously and prudently, if he demanded a *Note* under the *Payer's* hand, signifying, *By whose Order*, and *For whose account he makes such Payment*.

CHAP. IX.

Of Negotiating, Drawing, in or Endorsing of Bills, made Payable to Order.

Rule I.

ITs unadvisedly done for a Drawer, if he can any way excuse it, to make his *Bills* payable to order.

II. And a Remitter for his own account, doth not act prudently, that orders his *Bills* to be made payable to the order of his Correspondent, or that doth himself so endorse them, if the Correspondent live at the place where the *Bill* is to be satisfied.

III. A Remitter that remits for another mans account, doth very imprudently, if he order the *Bills* to be paid to his own Order, and so endorseth them; for then he himself stands obliged for the Value, without having any Advantage thereby.

IV. Also, he that remits for another mans account, should not make the *Bills* payable to

his own order, and so endorfe them; for then he makes them his own *Bills*, and is obliged to answer the Rechange, and the Charges, &c. but if he order the *Bills* to be made payable to his Principal, or his Order, then he is obliged for no more than the Sum he received, and may place that Rechange and Charges to the Principal's Account.

V. He that remits to a third, for the account of another, the third Person dwelling where the *Bill* is to be discharged, must not order the *Bills* to be made payable to the order of him to whom he remits, unless the Principal hath given expresse order so to do,

VI. If any remit for their own account, with a design to redraw the same himself, or order it to be redrawn by some other, in some other place, or for some other account, &c. then they must observe this, to order the *Bills* to be made payable (or so endorfe them) to their own order, or to the order of him that shall redraw them; for none can negotiate or redraw a *Bill of Exchange*, except it be made payable to his order who must negotiate it, because a *Bill* made expressly payable to any one, must be paid to him, and no other.

VII. In the Redrawing of a *Bill*, the Redrawer

drawer is looked upon, as the absolute and first Drawer, and the Remitter considered as the first Remitter; so that the Endorser of a *Bill* is as strictly obliged as the first Drawer and Maker of it, and the Possessor thereof hath as much Right and Law against him, as against the first Drawer.

VIII. The Redrawer or the Negotiator of a *Bill*, does not make a new *Bill*, but endorseth the old, in such like words as these, *Pay this for me to A. A. (or to his order) the value hereof in my own hands (or from B. B. or, &c.)*

C. C.

IX. By this Endorsement, he to whom the *Bill* is sent, is the true and right Possessor of it, and needs no further Assignment, Transport, or any other Title or Right, neither need he give the Drawer or the Acceptor any further account of it, viz. how he comes by the *Bill*.

X. And thus, when the Endorsement is made payable to order, he to whom it is endorsed as payable, may again endorse it, and so may as often be endorsed as there is room on the *Bill* for Endorsements.

XI. The Acceptant himself, as well as
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any other, may freely negotiate those *Bills of Exchange* that are by him accepted for his own account, if they be made payable to order, by the first Possessor or Endorser of them; and he may again endorfe them, and negotiate them, and make them payable to his (the *Acceptants*) order, and yet all this time the first Endorsers shall be never the less obliged.

XII. If the Endorsement have no more than, *Pay for me to N. N.* and it be not exprest from whom the Value was received, or was rescounted, then its look't on as no more than a single order, and the Endorser is considered still as the *Principal Possessor of the Bill*.

XIII. In all Endorsements, the place where, and the time when it was done, ought also to be exprest; and above all, the Endorser must observe to subscribe his Name.

XIV. He that Antidates an Endorsement, is guilty of fraud and deceit.

XV. A Remitter that hath an endorsed *Bill* put into his hands, must observe if the *Bill* itself be well made, and be compleat in all its Requisites, as if he himself were the first Remitter; but especially, he must observe, if in the Endorsement, the Name of him,

him, to whom it must be paid, be well and truly writ.

XVI. A Redrawer or Endorser doth very imprudently, if he deliver into the hands of his Remitter, with whom he contracted, Bills that he hath by him endorsed in *blanco*.

XVII. But yet greater is the hazard and folly of the Endorser, to send away Bills with a *blanco* Endorsement; and yet greater is the Error, when he that sends the Bills away, and the Endorser, are two distinct Persons.

XVIII. He also is very careless and ignorant, that sends away a Bill of Exchange made payable to his order, with a design to redraw the Moneys, or to demand Payment, and doth not first endorse his Bills.

XIX. If an Endorser commit any Error in the endorsing, or hath neglected any thing, so that there is likely damage to follow upon it, then the said Endorser is obliged to make good the Loss, and neither the Endorsers before nor after him, are any wayes chargeable with it.

XX. The Endorser must bind himself precisely

precisely to the tenure of the Bill, both as to the Sum and Time of Payment.

XXI. If the Endorser cannot meet with a Remitter, for the Neat and precise Sum, then if he meet with two Remitters, its observed if he hath both the Bills (the *Prima* and *Secunda*) in his Hands, that he ought to Endorse them both, on the one, so much to *A.* the value of *B.* and the rest on *C.* the value of *D.* and so gives to *B.* and *D.* each one Bill; Or in case he find but Moneys for a part at one time, and hath time enough to keep the Bill to seek for more, then he endorseth both Bills, to pay so much to *E.* the value of *F.* and the rest to his order, and gives one Bill to *F.* and keeps the other till further conveniency. But if there be but one *Bill* in the Endorsers hands, and he negotiates the *Bill* with two Persons, then he must endorse that *Bill* he hath, and take the Copy of it, and endorse it also, so much payable to one, the rest to another; and the original *Bill* must be delivered to him that hath the greater Sum, and the Copy to the other, who must receive the rest.

CHAP. X.

Of demanding Acceptance.

Rule I.

A *Acceptance* of a *Bill*, may presently, upon the Receipt thereof, be demanded by the Possessor thereof, except it be only payable at some great Fair, and then Acceptance is not demanded till the Fair begin.

I I. Any one to whom the *Bill* is entrusted, as well as the Remitter, or the actual Possessor thereof, may demand Acceptance.

I I I. Its the Duty of every one, to whom a *Bill* is sent to procure Acceptance, instantly to demand it.

I V. Acceptance must be demanded of him only, to whom the *Bill* is directed. And

V. It stands in the pleasure of him, to whom the *Bill* is directed, to accept it, or not; The Principal is not bound to accept his Factor's or Servant's *Bill*, unless he will; much less a Factor or Servant to accept their Principal's *Bills*.

V I.

V I. Though the designed *Acceptant* hath by Letter advised of, and promised *Acceptance*, for the account of a third Person, yet the Possessor of the *Bill* cannot compel him by virtue of his Promise to accept, if he will not voluntarily do it: But however, he remains obliged to the *Drawer*, to make good all the loss and damage, either in the *Exchange* and *Charges*, or in credit of the *Drawer*, seeing he drew relying on the Faithfulness and Promise of the promised *Acceptance*.

V I I. To accept a *Bill of Exchange*, is to oblige himself to the Payment and Discharge thereof; and he that accepts must discharge it; for by *Acceptance* he makes himself *Debtor*; and if the *Drawer* should chance to fail, before it be discharged, the *Acceptant* must notwithstanding satisfy it, and can have no redress on the *Endorsers*.

V I I I. *Acceptance* is either *Verbal*, or by *Writing*.

I X. A *Verbal Acceptance* is obligatory to the performance, and the *Acceptant* must perform his Promise; but in regard *verbal Acceptance* may be denied, therefore its safest to have the *Bill* under-written by the *Acceptant*. X.

X. Acceptance by Writing is done either by a Letter, or by the Acceptants under-writing the Bill.

XI. If the designed Acceptant do by Letter advise the Possessor of the Bill, That he will accept, and doth accept of it, it is as obligatory, as if he had under-writ it with his own hand.

XII. The Acceptant, when he accepts, must under-write his Name, and the time when he accepts, thus;

[York, April 28. 1680. Accepted, J. S.]

Which if he refuse to do, the Possessor may protest, as if Acceptance were utterly denied.

XIII. Acceptance of Bills payable at a certain day, or at some time after date, or at Usance, reckoned at some time after date, and all other Bills thus reckoned, must have the word [Accepted] but if payable after sight, then some use the word [Seen, or shown me] adding the day when, or both, as [Seen and Accepted.]

XIV. Its customary in some places, that he that demands acceptance of a Bill, leaves the same in the hands of the designed Acceptant (unless he presently declare whether

ther he will accept it or not) till he compare it with his Letter of Advice, and to give his Resolution, and note it in his Memorial; but then, before the return of the Post, he demands it again, and a positive Answer; and in case he refuse Acceptance, in manner and form above, he instantly, without delay, causeth it to be protested.

XV. Bills that are payable *per Cash*, or in current Moneys, ought presently, without delay, to be accepted, such Bills ought not to be entrusted with the Acceptant, especially if payable to order.

XVI. He that receives a Bill, without declaring positively whether he doth accept it or not, and detains the same till there are some evil Reports spread abroad concerning the *Drawer*, is obliged to return the Bill to the Possessor instantly, that it may appear whether he hath accepted it or not.

XVII. If a Bill by negligence, or on design, is left in the hands of the Acceptant, till the day of Payment, or till evil and bad Reports are divulged of, and concerning the *Drawer*, and that the designed *Acceptant* hath not promised Acceptance; in such a case, the designed *Acceptant* cannot be compelled to discharge the said Bill, on pretence that he should

should have returned the Bill, if he would not have accepted it; for it is the Duty of the *Possessor*, to take care for his Bill, and to see that the same be either accepted or protested; and if the designed *Acceptant* hath not underwritten it, nor promised Acceptance, he is not obliged, nor can be compelled; but yet it had been prudence in him, presently and without delay to have returned the Bill to the Possessor, and declared, that he would not accept it.

XVIII. He that receives a Bill payable at sight, or some dayes after sight, &c. and detains the same by him some dayes, without declaring whether he will accept it or no, is obliged, if he afterwards resolve to accept it, to accept it from the day that it was presented to him.

XIX. In case a Bill payable at a Moneth after sight, be presented for Acceptance the last day of the Moneth; he may accept it that day, and it will not be payable till the last day of the next Moneth.

XX. Though the *Acceptant* hath accepted the Bills drawn on him, yet the *Drawer* is still obliged, till it be paid; but he that accepts a Bill of Exchange, is obliged to the performance, so long till it be satisfied;

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no length of time, nor negligence in demanding can weaken, or make void the obligation; and in that respect, an *Acceptant* is more obliged than the *Drawer*; for if the *Bill* be not satisfied within the limited time, and the *Possessor* neglects to protest for Non-acceptance, he thereby looseth the advantage of seeking his Redress on the *Drawer*, but not on the *Acceptant*.

XXI. A *Remitter* acts prudently, if without delay he demand Acceptance, seeing delay may breed danger, and suspicious Reports concerning the *Drawer* being spread abroad, may cause the *Acceptant* to refuse Acceptance of his Bills, which before he would have done, if the Acceptance had instantly been demanded; and if by Fraud, or some other Abuse one Bill should twice be drawn in, he that demands Acceptance first, and gets it, shall oblige the *Acceptant* to make Payment, whereas the other that hath delay'd, must seek his Redress on the *Endorser*, and the case may be as it will, having once got acceptance, then the *Remitter* hath two obliged for the Payment, whereas otherwise he hath but one.

XXII. It tends also very much to the security and peace of the *Drawer*, whether it be for his own or for some other account, that
always

always, especially when the Bill is payable at sight, or some Dayes, or Weeks, or Moneths after sight, or at usance (when usance is reckoned after sight) the Acceptance be procured without delay, for otherwise he can make no true account when his Bills are due, and when payable; and in all cases, the Acceptance is an Obligation and Security to the *Drawer* as well as to the *Remitter*.

NB, That as in most places it is ordered by the Magistrate in how many dayes after a Bill is due, it ought to be protested, if not paid, so also it ought to be ordered in how many dayes after the offering of the Bills the Acceptance should be demanded, & when to be protested for Non-Acceptance, and the *Drawer* should be advised thereof, upon penalty, that by neglect or delay the *Possessor* of the Bill, or the *Remitter*, should loose the liberty of seeking redress on the *Drawer*, as well as for neglect of protesting for Non-Payment till it be too late.

XXIII. Every *Remitter* that remits not directly, but designs to draw in the remitted Sum again, either by himself, or others residing in other places, ought to send the *prima* Bill directly to the place where Acceptance must be demanded; and then, in case he order the accepted Bill to be left in the hands of the Person that demanded acceptance, he may endorse the *secunda* Bill, but he must

not forget to advise in whose hands the accepted Bill remains, and of whom it must be demanded.

XXIV. When the *Remitter* sends his Bill away to demand acceptance, he ought expressly to order his Friend, whether he shall keep it by him, or return it to him again when accepted, or send it to any other Person; or, if he must keep it, whether he must deliver it to him that shall shew him the endorsed Bill.

XXV. A *Drawer* acts prudently when he fears or doubts whether his Bill will be accepted or no, that he recommend the same to some of his Correspondents residing at the place where it should be accepted and paid, to prevent the dispect and dishonour of his Bill; and if the Bill be made payable to order, he ought to give the *Remitter* notice to whom the *Possessor* shall address himself, in case the Person on whom the Bill is drawn deny to honour and accept it.

XXVI. When a Bill is presented for Acceptance, the *Acceptant* should, before he declare whether he will accept or no, take special heed and care that the Bill presented be of the same tenure with the Letter of Advice; for he that simply accepts a Bill must pay it, no exception being able to excuse him afterwards.

XXVII.

XXVII. What is once accepted can no way be dissanulled and made void; an *Acceptant* is obliged to the Payment, though he never had in his hands, nor perused the Bill, if it can be made appear that he in words accepted it; wherefore the *Acceptant* should be careful, and accept no Bills but such as he will pay.

XXVIII. As the *Acceptant* is free to accept, or not accept any *Bills*, for whose account soever offered, so its free for him to accept freely, or *supra* Protest simply, or with any limitation or condition.

XXIX. But a prudent *Possessor* of the Bill will accept of no conditional or limitative Acceptance, whereby either the Payment is prolonged or made difficult, or the tenure of the Bill any way altered, unless he have exprefs order from the *Drawer* and *Remitter* so to do, but will protest against the *Acceptant*, as if he had absolutely refused to accept it; for whoever doth otherwise, and suffers himself to be satisfied with a conditional Acceptance, must run the *risco*, and hazard himself.

XXX. If a Bill be drawn to *Thomas, John* and *Richard*, they not being Partners,

nor one any way obliged to another, every one must accept for his proportion, and for as much as he will pay, and so none of them are obliged in *solidum*, and the *Possessor* must be content with such an Acceptance; but in case they altogether accept not for the full Sum, then he may and must protest against them all in particular, though one or two of them have accepted for their full Proportion.

XXXI. An *Acceptant* should be careful, and not accept any Bills, not having advice thereof from the *Drawer*, or at least, not accept any such but *supra* Protest in honour of the *Drawer*, though he have order from a third Person, that if such a Sum or greater be drawn for his account, to accept of it.

XXXII. Nor should he accept *Bills* that are of a later date than the Letters of Advice he hath received from his Correspondent the same Post; neither, in case the Letters do not mention nor confirm such a Draught of such a date, though the Letter of Advice be delivered him of the same date with the Draught, should he accept thereof; for the Advice and the Bills should punctually agree.

XXXIII. Nor should he accept of any Bills subscribed by any that pretend to have
Order

Order and full Power from another, unless he know his Seal and Hand-writing, and the *Principal* hath given advice that he hath given Order and full Power to such and such a Person, for such and such ends.

XXXIV. He must also be careful in accepting any Bill, if he suspect or believe that he hath accepted one of the same tenure, and for the same Sum, and must not accept of the last *Bill*, but under Protestation, that such his Acceptance shall be void and null, if it be found that he hath accepted another of the same tenure, and for the same Sum.

XXXV. A Servant must be careful in accepting *Bills* that his Master draws upon him; for if he accept in his own Name, he obligeth himself Personally, as for his own Debt, and as if the *Bill* were for his own account, (though he do no business but his Masters) but then the effects he hath of his Masters in his hands are obliged for the same, for so far as they reach, and if they are not sufficient, he must debit his Master for the rest; wherefore let a Servant when he underwrites *Bills* for his Masters accounts (accepted for his Masters account) and then underwrite his own Name.

XXXVI. The usual Formality that Ser-

vants use in accepting *Bills* of Exchange, viz. that he accepts of the Bill, as having Order and full Power from his Master to that end, who is the *Drawer*, will not excuse him, if the Bill be made for his own account, but if the *Bill* be made for the account of his Master, and the Servant accept it on such terms, then that Acceptance would not oblige him, but his Master only.

XXXVII. If any Factor or Correspondent desire his Principal or Correspondent to draw a certain Sum of Moneys on him, and promise Acceptance of the said Bills, but when the Bills come, refuseth to accept and honour them, such a Factor is not only a Knave, let his excuses and pretences be what they will, but he ought to be obliged to accept the said Bills, if they be according to his order, and not only make satisfaction for the loss and charges, but also to the *Drawer* for the discredit done to his Reputation, and to be punished severely for his Knavery besides.

XXXVIII. *Marin*'s advice is, that if a Bill be drawn on two, or more, they ought all to accept, or upon refusal, the Bill for want of due acceptance, must be protested.

XXXIX. But if a Bill be drawn on two
or

or more, and it be thus exprest, *To A. B. and C. D. or either of them*, its being accepted by either of them is sufficient.

X L. If a Name in the Bill be mended or enterlin'd, the Merchant on whom its drawn doth not well if he accept such a Bill, but if he doth accept it, he is obliged to pay it, and that a Name is mended or interlin'd, is no sufficient excuse nor legal warrant to refuse the Payment when it falls due.

CHAP. XI.

Of Protesting for Non-Acceptance.

Rule I.

IF a Bill be presented for Acceptance, and the *Acceptant* refuse absolutely to accept it, then the Possessor of the Bill is obliged instantly without delay to make Protest for Non-Acceptance.

I I. If the Acceptant cannot presently declare whether he will accept or no, but promiseth shortly to do it, or at the return of the next Post, then the Possessor of the Bill may without any Prejudice, at the request of the

Acceptant wait some days, or till the next Post day, and need not protest, yet if he will not wait so long, he is not obliged thereto, but may if he will instantly protest, notwithstanding the request, pretences and excuses of the Acceptant.

III. As the Acceptance of a Bill may be demanded by any Person whatsoever that hath the Bill in his hands, so also in case of Non - Acceptance, any Person whatsoever may protest, though his Name be not in the Bill, nor in the Endorsments.

IV. Protest is ordinarily made by a *Notary Publick* in the presence of two credible *Witnesses*, either in the presence of the designed *Acceptant* himself in any place, or at his House or Lodging where the *Notary Publick* shews the Bill, and demands Acceptance; and in case of refusal, he protests for all Charges, Loss and Interest, Exchange and Rechange, &c.

NB, At *Venice* all protests are made by the Servants of the *Colledge of Commerce*, and they are all particularly Registered in a Book for that purpose, to which every Merchant hath free access, which is a very commendable Order, for by this means many Bills (that otherwise would be returned protested) are accepted *supra* Protest in honour of

of the Drawer or Endorser; and also, by this means is (many times) discovered the difference that the Merchants have of their Forreign Correspondents, and in case of Protests for Non-Payment, their insufficiency, or at least, the baseness of the Acceptant, which tends much to their advantage, whereby they can regulate their concerns the better; and such an Order in all places of Exchange would be very profitable and advantageous to Commerce, as if here in *England* an *Office of Protests* were erected, and that none might make Protests but they that are authorized thereto, and that none might make full Powers, or Letters of Attourney to any to draw, or accept Bills in the Names of others, but they or their Order, and should keep Registers thereof, to which every one should have free access; here also should all full Powers given by any be revoked, and the time of the Revocation registered; and here also may Acceptants see if any Bills of theirs made payable to order, be entred to be protested on the last day of Payment, for Non-Payment, and so come to know where the Bill is to be found, and who is the Possessor of it, and so prevent the Protesting of it, under the pretence of the Acceptants having no order to make Payment, when the reason of the delay is, because he knows not whom to pay it: These also may be ordered,

ordered, in case any Bills be protested for Non-Acceptance, that are redrawn and endorsed by others, &c. to give Advice thereof to the first *Remitter*, or the first *Drawer*, whereby many Inconveniences and much Loss may be prevented.

V. If the Notary Publick meet the Acceptant, and he absolutely refuse to accept, then its usual for the Notary to demand the Reasons thereof, which Reasons he is obliged to insert in the Protest.

VI. If the designed Acceptant would not formally affront the *Drawer*, he may (and it is usual) give such Reasons for his refusal that tend least to his discredit, of which the most usual are, *Because he hath no advice thereof*, or *He himself will advise the Drawer of the Reasons*, or *For want of order from the third Person, for whose account the Bill is*.

VII. Its no lawful Excuse to refuse Acceptance because the Bill is made payable to order, and is not endorsed, or because the Acceptant will know before he accept, to whom it is payable.

VIII. Nor is it a lawful Excuse to pretend, *That he hath accepted the other Bill, and that he will not accept two Bills for one Sum and Parcel:*

Parcel; for the Acceptance can be made with this condition, *That the same shall be of no effect if he have accepted one of the Bills already.*

I X. A Possessor of a Bill may protest against a limited and conditional Acceptance, as also against an Acceptance without date and Subscription of the Name of the Acceptant, as if the Acceptance had been absolutely refused.

X. If an Acceptant make any Difficulties simply to accept the Bill, and the Possessor will accept of no conditional Acceptance, and therefore protests, and the Acceptant gives for Answer, *That he is ready and willing to accept the same for a longer time, or For a less Sum, or with some other Conditions, he should do well and prudently to add thereto, On condition the Demander of Acceptance will instantly and presently declare whether he will accept of such an Acceptance or not; and in case he be silent to protest formally, that he will not be obliged to this Acceptance for the future.*

X I. If the Notary find not the Acceptant at Home, nor can meet with him in any other place, then he doth his business effectually, if he demand acceptance of the Acceptant's Wife, or of Father or Mother, Sister or Brother, Man Servant or Maid Servant,

vant, or any other in the House; and if none be at Home, if he relate the matter to any of his Neighbours, and express the same at large in the Protest.

XII. If the Acceptant be abroad, and hath left no Order, nor given any full Power to any to accept the Bills that are drawn on him, then the Possessor of the Bill need not wait till his return Home, but must Protest for Non-Acceptance at the House of the said Acceptant, or at his Lodgings.

XIII. If the Acceptant is not known, nor can be found, then the Notary ought to go to the Post-house, or some other place where he can conveniently enquire of him; and if for all this he cannot find him, he must then protest, and insert in the Protest how diligent he was to find him out.

XIV. If two Persons of one and the same Name live in the same Town, and the Possessor knows not which of them the Bill is directed to, if they both refuse Acceptance, he is obliged to protest against both.

XV. A Protest for Non-Acceptance need not necessarily be made at the place where the Bill is to be paid, but may be made at the place where the Acceptant lives, and in
any

any place whatsoever where the Acceptant may be found.

X V I. In every Protest, either above or at the end thereof, or in the middle thereof, the *Bill of Exchange* that is protested, must be Transcribed and Copied, together with the Supercription, and all the Endorsements (from word to word) if there be any, and it must be exprest thus, that *This is the Copy of the Original Bill that is protested, whereof Acceptance was demanded, but refused*; and then what answer the Acceptant further gave to the Demanders of Acceptance.

X V I I. *Marinus* his advice is, Presently upon the refusal of Acceptance to enter the Protest, at least, there is no necessity of giving three dayes, or one hours respite to consider on't, whether the Acceptor will resolve to accept or no.

X V I I I. Yet at the request of a known honest Merchant some time may be given, provided the answer and resolution whether he will accept or no, be given before the next Post (after the Receipt of the Bill) be ready to depart, that so the Possessor of the Bill may advise whether he hath protested or no.

X I X. If the Party that accepted the Bill
dye

dye before it be due at the appointed time of Payment, the Possessor must make demand of his Executors, Administrators, &c. at the last dwelling House of the Acceptant; and if they do not presently pay, then must a Protest be entred, as you would have done if the Acceptant had been living.

XX. If the Party to whom payable should dye before the Bill fall due, yet nevertheless the Moneys and Payment must be demanded at the time by one or other, and if the Party demanding in the Name of the deceased shall offer sufficient Security to the Acceptant, and it be refused, Protest must be entred against him.

CHAP. XII.

Of Acceptance of Bills of Exchange supra Protest.

Rule I.

IF an Acceptant scruple to give Acceptance, for the account of him for whose account the Letter of Advice saith it is drawn; or if for want of advice, he know not for whose account it is drawn, then he may, if he look
upon

upon the Drawer as sufficient, accept the said Bill *supra* Protest in honour of the *Drawer*, and for his account.

I I. Though it is not usual to make a formal Notarial Protest upon an Acceptance *supra* Protest, for want of advice, but only clearly to express at the Acceptance, that it is *supra* Protest accepted, yet its better, and the Acceptant acts more prudently and safely, when he is not fully assured of the Sufficiency and Honesty of the *Drawer*, that he cause the Bill to be formally protested, or at least, that he cause a Notary Publick to observe and note, that the Acceptance is not simply given, but *supra* Protest.

I I I. When a Bill is made payable to order, and endorsed by a sufficient man before acceptance be demanded, then if the *Acceptant* scruple to accept for the account of the *Drawer*, or for the account of him for whose account it is drawn, he may *supra* Protest accept it in honour of the Endorser.

I V. When the *Acceptant* doth thus accept *supra* Protest in honour of the Endorser, he must cause a formal Protest first to be made for Non-Acceptance, and is obliged without delay to send the said Protest to the said Endorser for whose honour and account he hath accepted it.

V. An acceptance *supra* Protest obligeth the Acceptant absolutely to the Payment as much as if there had been no Protest, for its all one to the Possessor of the Bill, for whose account it be accepted, if it be accepted at all, and the Possessor hath his redress and remedy as sufficiently as ever on all the Endorsers and Drawers, if the Payment be not punctually made at the day by the Acceptant.

VI. A Possessor of a Bill must be satisfied and contented with an acceptance *supra* Protest (for it concerns not him in the least whether the Acceptant give a simple acceptance, or an acceptance *supra* Protest, seeing the Acceptant must pay the Charges to the Notary Publick) except he had order from the Remitter, not to accept of such an acceptance; and then in case of refusal of a simple Acceptance, he must and may protest.

VII. When an Acceptant hath accepted a Bill *supra* Protest, and the Possessor of the Bill is not satisfied with it, and by the Notary Publick and Witnesses, demands a simple Acceptance, or upon refusal makes a Protest, then the Acceptant (if he be resolved not to accept simply and freely) doth act prudently and wisely if he renounce his Acceptance *supra* Protest, desiring that it may be inserted

ed in the Protest, and be considered as void and of no effect, as if it had never been done.

VIII. No man, neither the Possessor nor the Demander of Acceptance, nor any third Person whatever, may accept a Bill of Exchange unless the Acceptant refuse, or is not to be found, or hath left no order for the Acceptance.

IX. When the Acceptant will not accept at all, then the Possessor himself may, after he hath protested for Non-Acceptance, accept the same *supra* Protest.

X. This also may a third Person (that is not concerned in the Bill) do, whether the honour of the same Bill be recommended to him or not, and that neither in honour of the Drawer or any Endorser, or of the Person for whose account it is drawn, *i. e.* he may accept *supra* Protest.

XI. An Acceptance *supra* Protest must be done in this manner; the Acceptant *supra* Protest, whoever he be, must personally appear before a Notary Publick and Witnesses, (whether it be the same Notary that made the Protest or not, matters not) and there he must declare that he doth accept such a pro-

tested Bill in honour of the Drawer or Endorser, &c. and that he will satisfy the same at the appointed time; and then he must write under the Bill with his own hand, *That he hath accepted is supra Protest in honour of such and such, &c.*

XII. An Acceptance *supra* Protest may be made so, that though it be in honour of the *Drawer*, yet it may also oblige the *Endorsers*, and in such a case the Protest must be sent to the Endorser; but these too cautious Practices of some tend more to the discredit of the Drawer than to his honour.

XIII. A Possessor of a Bill is not obliged to accept of the Acceptance of a third Person *supra* Protest, whose sufficiency he suspects, seeing the *Drawer* is obliged to satisfy the *Remitter* in case of Non-acceptance; but if the third Person will offer sufficient security for the Payment of the Bill, then the Possessor must be satisfied and contented therewith.

XIV. A Possessor of a Bill is not obliged to accept of the Acceptance of a third Person *supra* Protest in honour of any of the Endorsers, or of the Drawer, if the Acceptant *supra* Protest will re-draw the same on the Endorser

Endorser or Drawer, except he declare, *NB* that the honour of the Bill was recommended to him by the Endorser or Drawer, or that he declare, that he hath Effects in his hands for the account of the Endorser or Drawer, whereby he can satisfy the Bill without redrawing on either the Endorser or Drawer.

X V. When the Possessor of a Bill hath accepted of the Acceptance of a third *supra Protest* in honour of the Drawer, then the Drawer is not in any wise obliged to give any further satisfaction to the Remitter. But if the Acceptance be made in honour of an Endorser, then the Bill in respect of the Drawer is as absolutely Protested, and he is obliged to give Satisfaction, either to the Endorser, in whose honour it was accepted, or to the Remitter, as if the Acceptance *supra Protest* had never been made.

X V I. When a Bill is for Non-acceptance Protested, and after *supra Protest* by a third Person accepted, &c. and the designed Acceptant afterwards gets further Advice and Order, and resolves absolutely to accept and pay the same, then the Acceptant *supra Protest* may suffer it, and yet the Possessor shall not be obliged, to free

and acquit him from his Acceptance; but the first designed Acceptant is obliged to pay the Acceptant *supra Protest*, Provision and Charges, &c. because by his acceptance *supra Protest*, he hindred the Bill from being returned with Protest.

XVII. Any Man that will may *supra Protest* accept a Protested Bill in honour of the Drawer, or any particular Endorser, that was before accepted *supra Protest* in honour of some particular, but later Endorser, and the first Acceptant is obliged to allow of the same, and yet remain obliged for his first acceptance, but the last Acceptant is obliged to pay and allow Provision and Charges to the first, for the Reason above: For instance, if there were three Endorsers, and one man accepts the Bill *supra Protest* in honour of the last, another may come and accept again in honour of the first or second Endorser.

XVIII. He whoever he be, that accepts a Bill *supra Protest*, puts himself absolutely in the stead of the first designed Acceptant, and is obliged to make the Payment without any exception, and the Possessor hath the same Right and Law against such a one, as he would have had against the first designed Acceptant, if he had accepted.

XIX. He that accepts a Bill *supra Protest*, may lawfully demand a Recompence for the credit given to him, in whose honour he accepted, as well as Provision and Postidge, and other charges; and in case the Acceptant should be forced to Re-draw the parcel on him for whose honour he accepted, he ought truly and faithfully without contradiction to accept and honour his said Acceptants Bills, and return him Thanks for his Service.

XX. No Man ought to accept a Bill *supra Protest* in honour of the Drawer, unless he hath first spoken with the designed Acceptant, and known the Reasons why he suffers it to be protested; but if the Acceptance be in honour of an Endorser, this Information is to no purpose.

XXI. When a Bill is protested for Non-Acceptance, though the *Drawer* and his Hand-writing be never so well known, if the Person for whose account it was drawn be unknown, and cannot be found, then no man ought to be too free and liberal in accepting the same *supra Protest* in honour of the *Drawer*.

XXII. He that accepts a Bill *supra Protest*

test in honour of any Endorser, or of the Drawer, though it be without their knowledge or order, yet he hath his Redress and Remedy on the said Person for whose honour he accepted (who is obliged to indemnifie him) as if he had full Orders so to do.

XXIII. If a Drawer or Endorser, in whose honour a Bill is accepted *supra* Protest, return an Answer to the Acceptant *supra* Protest, and approves of the said Acceptance, then the Acceptant may freely pay the Bill, without any further Protest for Non-Payment; but if the Persons in whose honour the Bill was accepted are Quarrellsom, and pretend they gave no such order to him, or if they answer not at all, then let the Acceptant *supra* Protest cause a formal Protest for Non-Payment to be drawn up against the first designed Acceptant; and if then the Notary return without Payment, and the Acceptant *supra* Protest be forced to pay the Bill, then he must order the Action, Right and Law of the Bill to be ended and transported fully to him, as if he were the true Possessor thereof, that so he may have his redress on the Drawer or Endorser, in whose honour he accepted, or on any of the former Endorsers.

XXIV. He that accepts a Bill in honour of
the

the Drawer, hath no remedy against any of the Endorsers, because he only obligeth himself for the Drawer.

X X V. He that accepts in honour of an Endorser, hath no advantage of any Endorsers that followed him for whose honour he accepted; but he and all that were before him, even to the Principal and first Drawer are all obliged to him, to make him satisfaction.

X X V I. When an Acceptant gets advice that a certain Sum is drawn upon him, and two first or two second Bills of one and the same Contents, Date and Sum, but endorsed to be paid to several, be presented, then let him accept neither of them, neither freely nor *supra* Protest; and if the one be accepted before the other be presented, let him protest the latter, and not accept it *supra* Protest in honour of the Drawer, unless he hath Letters of Advice of each particular Bill from the Drawer.

CHAP. XIII.

What the Possessor of a Bill of Exchange protested for Non-Acceptance, and is not accepted supra Protest, together with the Drawer and Endorser, are obliged to.

Rule I.

HE that hath protested a Bill for Non-Acceptance, whether he be the true and real Owner of the same, or only a third Person, to whom it is sent to procure Acceptance, must (if it be not accepted *supra* Protest) advise the Person by whom it was given or sent to him, for procuring Acceptance with the very first opportunity, and send or give to the same Person either the Protest alone, or both the Bill and the Protest.

II. If a Bill be made payable positively to such a Person, and Acceptance is absolutely denied, then both the Bill and the Protest must be returned whence they came; but if Acceptance be delay'd, and not absolutely denied,

denied, but hopes are given by the Acceptant that he will accept it the next Post, or very shortly, he expecting more sufficient Orders and further Advice, and that then he may accept the protested Bill; then he that hath the Bill in Possession must only return the Protest, and keep the Bill.

III. He that hath a Bill protested for Non-Acceptance, which is not payable to himself, nor endorsed to him, but is payable to the order of the Remitter, or the Drawer, &c. must only return the Protest, and must keep the Bill in his Possession till it be demanded of him by him to whom it is payable, and on whom it is endorsed.

IV. If the Protest be not made in the presence of the Acceptant himself, he being absent, from home, or not to be found, then ought only the Protest to be returned, and the Bill must be detained till the day of payment, or till further order, that if the Acceptant be found, he may demand acceptance of him, and he may accept if he please; and in case of refusal, its best and prudentest for the Possessor, or the Person that should demand acceptance, to make another formal Protest against the said Acceptant.

V. When a Bill made payable to order,
that

that is not sent to the Presenter by the first Remitter, but by some other, is protested for non-acceptance, then the Presenter doth act prudently, if the Bill be endorsed and drawn in from other places, if he not only send the Protest to the Person from whom he received the Bill, but also give Advice directly to the first Remitter of the Non-acceptance, and that it is therefore Protested.

NB, It would be very convenient and necessary, that it should be ordered, that all Protests, either for Non-acceptance or Non-payment, as also in case of the failure of the Acceptant and his Insolvency, when the Presenter cannot send the principal Act and Protest to the first Remitter, that then the Notaries should be obliged to send a Copy of the said Protest instantly and directly to the first Remitter, which might easily be done if some few *Notaries* were appointed to that Office, as is before observed in *Chap. 11.* and *Rule 4.* this would prevent much Damage and Loss.

V I. The *Remitter* is obliged so soon as he receives advice of the Protest of the Bill to give advice thereof to the Drawer.

V II. A Drawer or Endorser of a Bill is obliged not upon a simple advice, but so soon

as the Protest is shewn to him, either with or without the Bill, to give sufficient security for the Payment thereof at the time and place appointed, or else for the Principal and Charges and Rechange, in case it be not satisfied there.

VIII. When the Bill hath yet so much time remaining before the day of Payment come that the Drawer or Endorser can order the Payment thereof at the place appointed at the day of Payment, then is the Remitter obliged, having got security to return the Bill, together with the Protest, to the place where Payment is to be made, there to demand Payment of the Acceptant, or to whom it was addressed and directed; and if he procure Payment, he must demand of the Acceptant no more than the Charges of the Protest and Postidge; but if he procure them not, he must again protest for Non-Payment, and then the Drawer is obliged to satisfy the Rechange and Charges.

IX. When a Bill drawn at long time, is protested for Non-Acceptance, and the Drawer hath given the Remitter sufficient Security, then the Drawer is not obliged to cause his Bill to be accepted by the Acceptant or any other; for the Security for Acceptance is looked upon as if it were accepted.

X. The Drawer or Endorser give sufficient security if they give to the Remitter other Bills payable to his order, for the same Sum, and due at the same time, that were drawn or endorsed by any Merchant that frequents the Exchange, and is by all men accounted sufficient.

XI. The Remitter is not obliged to take such Bills, unless the Drawer promise to pay the Charges and Postidge of the Protest, and if not all, yet at least half Provision for this new trouble of the Correspondent, and demanding Acceptance; but if the Drawer appoint any other at the time and place of Payment to satisfy his Bill *supra* Protest, and in the interim give sufficient security, then he need allow no Provision at all, but only the Charges of the Protest and Postidge.

XII. The Drawer or Endorser of a Bill protested for Non-Acceptance, must be very circumspect, and must not give to the Remitter or Presenter of the Bill any other Bills without the re-delivery of the first Bill and the Protest, or that the Remitter give sufficient security for the Restitution thereof, or of the Value, in case the said Bill should be satisfied.

XIII.

XIII. The Remitter is not obliged, nor indeed is it advisable for him to enter into such an Obligation, because the Drawer is obliged to procure Acceptance and Payment of his Bills by the Acceptant, or by some other, and these other Bills are but the security of the Remitter, which may also contain such a clause and condition, that the Payment thereof shall only be made for the value of the Bills protested for Non-Acceptance, and were not *supra* Protest accepted.

XIV. When the Bill with the Protest is presented to the Drawer, and these two can agree for the Rechange, then he may freely and safely dissanul the Contract with the Remitter, and satisfie him upon the Delivery of the first Bills with the Protest.

XV. When a Bill is returned with Protest for Non-Acceptance, though there be yet sufficient time for the ordering of the Payment, according to the tenure of the Bills, yet if the Drawer and Remitter agree to make the Bills and Contracts void, then the Rechange should be equally adjusted, and that thus it should be reckoned at the Course that the best Bills on the Exchange were negotiated at, payable at the same time; and over and above this, the Remitter must demand

demand half Provision at least, and Courtage, together with the Charges of the Protest and Postidge.

NB, It were necessary, to prevent Disputes and Contentions, that a certain Rule and Method were ordered for the regulating the Course of Re-changes, when there is occasion for it.

XVI. When the *Drawer* and *Remitter* cannot agree about the Course of the Re-change, and the *Drawer* or *Endorser* will not give any security for the same, but pay it in Moneys instantly, then it is sufficient for the *Drawer* to return to the *Remitter* the value of the Bill that he received, and need not pay the Rechange till the day of Payment come, and they get advice in what course at sight the Bills were made that Post or the next, and accordingly the *Drawer* is obliged to pay the *Remitter* how high or low soever it be, and the *Remitter* is obliged to be satisfied with it ; but then in case the *Remitter* will neither at first (at the Payment of the value to him) nor at last (at the Payment of the Re-change) part with the Bills and Protest, the *Drawer* may so long detain his Moneys, till he give security for the Restitution thereof.

XVII. If all the Bills be not to be had,
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the Drawer must be very circumspect in his making the contract void, & must not pay any Moneys but upon sufficient Caution for the Re-delivery of the Bills and Protest, and for all the Damage and Loss that may accrew thereby.

XVIII. When the time of Payment is so near that the Drawer or Endorser cannot give other orders for the Payment of the Bills at the time and place appointed, then the Possessor or Remitter of the Bill are obliged upon sufficient caution and security offered to them for the Re-change and Charges, &c. to wait till the day of Payment, and till the Course be known from the place where the Payment should first have been made.

XIX. Though an Endorser hath satisfied his Remitter for the Re-change and Charges of a Non-accepted protested Bill, yet the Drawer or an earlier Endorser is not obliged to do the same, but may insist upon giving security in manner and form as is above mentioned.

CHAP. XIV.

*Of the time of Payment of Exchanges.**Rule I.*

IT is ordinary and usual in any place to make Bills of Exchange payable at a longer or shorer time, as the Parties can agree, no certain and fixed time being prescribed.

II. But the Time must precisely be agreed upon, and written in every Bill of Exchange, that the Drawer may certainly know when they fall due; and it were therefore to be wisht that no Bills might be made payable after sight or at sight, and that a certain time might be limited, in which the Acceptance is to be demanded, upon a penalty that the Presenter of the Bill, in case of the refusal of Acceptance, might have no Redress upon the Drawer.

III. The time of Payment is conditioned and agreed on betwixt the Drawer and Remitter, sometimes (*1st*,) on a certain fixed and appointed day, (*2^{dly}*,) at sight or after sight,

sight, (*sally*,) at some Dayes, or Weeks, or Moneths after the date, (*ashly*,) at Usance, half Usance, Usance and half, double and trebble Usance, &c.

I V. A Bill made payable at a certain day is understood to be payable on that same day when it comes, that it falls due on, according to the Stile of the place where the Payment is to be made; so that a Bill made at *Amsterdam* payable at *London* or *Hambrough* the last of *November*, is not payable till the last of *November*, according to the *Old Stile*, which is the account of time that they observe in those places; and on the contrary, a Bill made at *London* or *Hambrough* payable at *Amsterdam* the last of *November*, is payable at *Amsterdam* the last of *November*, according to the *New Stile*, which is the account of time that they observe there.

V. When a Bill says simply [*Pay*] without any mention of any time, then its to be understood that the time of presenting the Bill is the time of Payment, and that the Payment must be made at sight.

V I. If Bills be made payable at some days, &c. after sight, or after date, then for reckoning the time of Payment, the first day after the sight, or after the date, is reckoned

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the first day, and not the day whereon it was presented, with which *Marino* also agrees.

VII. To reckon out the precise time of the Payment of any Bill payable at any time after date, its necessary to know the difference of the *Old* and *New Stile*, if the places from whence is drawn, and on which is drawn observe a different Stile. For better Information herein, these following places observe the *New Stile*.

Amsterdam, Dordrecht, Harlaem, Leyden, Rotterdam, and all the United Provinces of Holland, as also Middlebrough, Vlissingen in Zealand, Antwerp, Brugge, Dornick, Gent, Ryssel, Brussels, Valensan, and all Brabant, Flanders and Artois, Bordeaux, Lyons, Marseillers, Nantz, Paris, Roan, Rochelle, and all France, Lessabon, St Hubes, Port a Port, and all Portugal, Alicant, Bayone, Bilboa, Cadix, Madrid, Mallega, St Sebastian, Sebilien, Valence, and all Spain, Messina, Palermo in Sicilia, Bari, Bergamo, Bisansone, Bolognien, Florense, Genoua, Lyborne, Lucca, Mantua, Milan, Naples, Rome, Venice, and all Italy, Ausburge, Crembes, Lints, Wien, and several places of the Empire, Bolzano in Tyrol, Breslaw, and all Silesia, Colne, Dantzick, Konigsburge, Thorne, and all Poland, &c.

These

These Places keep the *Old Stile*,
England, Scotland and Ireland, Archangle
in Muscovia, Berline, and all Brandenburge,
Copenhagen, and all Denmark, Embden, and
all East-Friezland, Frankford on the main,
Geneva, and the Protestant Cantons of Swis-
zerland, Hambrough, and all Holsteyn, Lu-
beck, and all Macklinbrough, Leypsig, Mag-
deburgh, Naumbrough, and all Saxonia, Riga,
and all Liefland, Stockholme, and all Sweden,
Strasburge, and all thoj Elfas, &c. All the
Popish Electors and Princes of Germany observe
the New, and all the Evangelical Electors and
Princes they continue still the Old Stile.

VIII. If a Bill be made payable at some Weeks after sight or date, then the Weeks must first be reduced into Dayes, and seven Dayes reckoned for a Week, and in accounting, the dayes of the *Almanack* must be followed, taking the first day after the sight or date for the first day, and so forward one day after another, without excluding either *Sundayes* or *Holy-dayes*, and the last day is the day of Payment, whether in the beginning or the middle of the Week.

IX. If a Bill be made payable a Moneth or two after date, or after sight, then the day of Payment falls on the same day of the following Moneth, &c. that the Bill was pre-

sentent or dated, and if, the Moneth it is to be paid in hath not so many dayes as the Moneth that the Bill was dated in or shown had, then the day of payment falls on the last day of the Moneth. As for *Example*: A Bill is dated the 7th of *January*, and is payable a Moneth after date, this Bill is payable the 7th of *February* (not the 8th) A Bill dated the 30th of *January*, payable a Moneth after date, this Bill is payable on the 28th or 29th of *February*, being the last day of the Moneth; and so in Bills payable a Moneth or two after sight, if presented on the 30th of *January*, are payable on the last of *February*, though *February* hath not so many dayes in it.

X. A Bill dated according to the *Old Stile*, payable a Moneth after date in a place where the *New Stile* is observed, does not alwayes fall due a Moneth after the date *Old Stile*, but a Moneth after the date according as there the *New Stile* was writ at the date of the Bill, and *contra*. For *Example*; A Bill dated the 29th of *April* in *London*, according to the *Old Stile*, payable a Moneth after date in *Amsterdam* where the *New Stile* is writ, does not fall due at *Amsterdam* the 25th of *May* according to the *Old Stile*, which is the 4th of *June* according to the *New Stile*, but on the 5th of *June*; for when the Bill was dated the 25th of *April* *Old Stile*, it was the 5th of *May*

May New Stile, and from that time must the Moneth be reckoned, &c. and *contra*, this must be well observed, seeing in the Leap-years this makes two dayes difference, in other years three dayes.

XI. In the calculating the time of Payment of Bills payable at Usance, sometimes Usance is taken for some certain time after the date of the Bill, sometimes for some certain time after sight, nor is this in all places alike, wherefore it must be observed that,

Usance from *Venice, Geneva, Liborno*, all *Italy, Spain and Portugal*, to *Amsterdam*, is two Moneths after the date.

Usance from *Paris*, and all *France, London*, and all *England, Scotland and Ireland*, from *Antwerp*, and all *Flanders*, and *Brabant*, from *Middleburge, Rotterdam*, &c. is one Moneth after date, double Usance two Moneths, half Usance fifteen dayes, whether the Moneth hath but twenty eight dayes in it, or thirty one dayes.

Usance from *Dantzicke* and *Konigsburge* is one Moneth after sight, and double Usance two Moneths, and half Usance fifteen days, i. e. at *Amsterdam*. But now Exchanges from *Dantzicke* and *Konigsburge* are seldom made at Usance, but ordinarily from *Dantzicke* at forty dayes date, or after date, and

from *Konigsburge* at forty one dayes after date, i. e. at *Amsterdam* payable.

Ufance from *Neurenburge*, *Ausburge*, *Wien*, *Franckford*, and other places in *Germany*, is at *Amsterdam* fourteen dayes after sight, half Ufance seven dayes, double Ufance twenty eight dayes, which is four Weeks, and not an Almanack Moneth.

On the Contrary.

Ufance from *Amsterdam* to *Italy*, *Spain*, *Portugal*, is two Moneths after date, to *England*, *Flanders*, *Brabant*, &c. one Moneth, to *Paris*, according to the new Royal Order, thirty dayes after date, to *Ausburge*, &c. fourteen dayes, to *Breslaw* fourteen dayes, &c.

Ufance at *London* from *Amsterdam*, *Rotterdam*, *Antwerp*, one Moneth, from *Venice* three Moneths; From *Hambrough* to *London*, and from *London* to *Hambrough* two Moneths after date, i. e. double Ufance, but Bills are commonly given at double Ufance.

XII. A Bill dated the 28th of *February*, payable a Moneth after date, or at Ufance (and Ufance is reckoned there for a Moneth after sight) and is presented for acceptance the 28th of *February*, then it falls due the 28th of *March*; but if it be dated *ultimo February*, then its not due till the *ultimo March*,
and

and so in *June* and *July*, the one having thirty dayes, the other thirty one, and this the Acceptant may alter if he please, if for the 30th of *June* he write *ultimo*, it will not be due till *ultimo July*.

XIII. In exchanging, the circumspect Remitter will have a regard to the Time, and accordingly take his measures, and keep his Moneys till such a time as he knows there will be great occasion for it at the Place where he is, or remit it to such a place to be remitted again, so also the Drawer must observe to take such an opportunity to draw in his Moneys, when he knows there is Moneys enough stirring; for multitude of Bills and scarcity of Moneys advances the Course and paucity of Bills; and multitude of Moneys depresseth the Course of the Exchange in any place.

XIV. An Exchanger should know in the places where Banks are kept, the ordinary times when the Banks are shut, for the making of new Books, and when they will again be opened; for at such a time there may be some Advantage for the Drawer and Remitter.

XV. When there is Difference arising betwixt the Possessor or Presenter of the

Bill about Calculating the Time of its payment, i. e. the precise Day, the Possessor or Presenter, if circumspect, will demand Payment on the Day according to his own Calculation, and if on the last day of Respite he procure not Payment, he should and may Protest, and send the same away, but he must detain the Bill till the day of payment, according to the Calculation of the Acceptant; and then if he procure not Payment, he must *de Novo* Protest.

X V I. Bills made payable at two or three dayes sight, or at sight should not have the privilege of the respite dayes, (especially if they be five or six, or more) but should be paid within twenty four Hours, after the day they fall due, or be protested, because the reason why Bills are made payable at such short sight, is because the *Remitter* hath present occasion for his Moneys.

CHAP. XV.

Of Demanding of Payment.

Rule I.

THe *Possessor* of a *Bill* must be careful that the same be sent to the place where payment must be made timously enough, that payment at the day of payment may be demanded; and lest the *Post* should be uncertain, or be detained any way, he must never keep a *Bill* till the last Moment, lest before its arrival the day of payment be past, and respit dayes expired; for if not demanded in time, a Protest is afterwards insignificant as to recover any thing of the Drawer.

II. The *Possessor* of a *Bill* is obliged, at the day of its becoming due, to demand the Monies, and must not give or admit of any delays more than the respit dayes.

III. He that takes a *Bill* from another to demand satisfaction, whether he be a Merchant, Chashier, &c. and neglects to demand it at the day of payment, and is not urgent for the same within the days of respit,
but

but lets them pass without protesting, is obliged to make good the Damage that may accrue thereby.

IV. He that hath a *Bill* in possession, which says only [*Pay*] without mentioning the time when, or that is not dated, or that is not clearly and legibly enough written, payable some time after date, &c. so that the certain precise time of payment cannot be calculated, must be very circumspect, and demand the Moneys at any time when he can probably make it appear, or seem to be become due.

V. He that hath a *Bill* sent him to demand Acceptance, and to keep the same by him till it be demanded by him who shall produce the endorsed *Bill*, if the same endorsed *Bill* is not produced at the last day of the respit, nor demanded of him, then he may demand of the Acceptant payment thereof, offering caution and security for the producing the endorsed *Bill*, and in case of refusal he may protest for Non-payment, and such a Protest is of validity against the Drawer; but yet if he that hath the *Bill* hath neglected to demand and to protest, he is not blameable for so doing, nor any way responsible, but the Detainer of the endorsed *Bill* may thank himself for his carelessness.

V I. If a Bill be not endorsed, or the Endorsement not right made, or if there want any thing in it, yet notwithstanding the Possessor of the Bill is allowed to demand payment, and the Acceptant is obliged to pay him upon the Delivery of both the Bills, if he will under his Hand and Seal oblige himself to procure a third Bill for the same Sum rightly and truly endorsed.

V II. Because many times an Acceptant knows not to whom his Bills are payable, when they are made payable to order, therefore the Possessor of the Bill is obliged to give the Acceptant timely notice; and its the Custom at *Amsterdam* among Merchants that are of Repute and Credit, and that trust one another, that the Possessor of a Bill made payable to order, and to be paid in *Bank*, at the day of payment to send the accepted and endorsed Bill to the House of the Acceptant, and desire him to order that the Value be write of in *Bank*; but according to a special Order of the City of *Amsterdam* no Possessors of endorsed Bills are obliged to give them out of their hands, unless they be already satisfied; and the Possessors must on the day of payment declare to the Acceptants that they are to have the payment by virtue of the Endorsements, and in case of refusal

to pay then before the delivery of the *Bills*, then the *Possessor* must bring the *Bill* to one of the *Book-keepers* in the *Bank*, there to be Registered, whence the *Acceptant* must fetch them, after he hath ordered the Parcel to be writ of to the *Possessors* account, and not before, &c.

VIII. A *Possessor* of *Bill* payable in current Moneys, either to himself directly, or to order, is not obliged to part with his *Bill* before he be effectually satisfied; and if he suspect the *Acceptant*, he must not exchange his *Bill* for an Assignment, whether on a *Cashier* or some else, and may with good reason detain the *Bill*, till the Assignment be satisfied, in case he will write on the *Bill* that he hath received from the *Acceptant* an Assignment for such a Sum, on such and such a Person.

IX. In the demanding of *Payments*, especially as well as in the whole Trade of Exchange, Equity, Credit and Honesty must be observed and encouraged: But Cheats and Knaves should be severely punish't, such as *J. Snaw*, *R. Shaw*, *Joseph Fernley*, &c.

CHAP. XVI.

*Of the Payment of Bills by the
Acceptant.**Rule I.*

Bills must be punctually paid, according to their Tenure and Contents, yet (in respect of the time when, and the Moneys wherewith) in such manner as is usual and ordinary at the place where they are to be paid, unless there be some certain express Condition in the *Bills* to the contrary.

II. The payment of a *Bill* must be made to the true and lawful *Possessor* of it; wherefore *Acceptants* in the payment of their *Bills* must be careful and circumspect, lest paying it to others they be forced to pay twice.

III. If payment be demanded by any the *Acceptant* knows not, and scruples whether he be the true and lawful Owner of the *Bill*, and the *Possessor* thereof cannot demonstrate that he is the Man to whom it is made payable, either originally, or by the Endorsements, because he may be a Stranger, and hath

hath no Acquaintance, then its most advisable for the *Acceptant* to delay and defer the *Payment* till the last day, if peradventure some other in the mean time may not demand it.

IV. No *Bill* must be paid before it become due; if it be paid before, the *Acceptant* runs the hazard and danger that may ensue; Yet this doth not hinder, but that if a *Bill* be made payable to order, it may be Negotiated and Endorsed; but however the *Acceptant* must not pay before the same become due.

V. When a *Bill* is accepted, that is made payable to a certain Nominated *Person*, if the said *Person* desire the *Acceptant* to pay it to any other, and he promise to do it, he is obliged thereto, whether the *Possessor* should in the interim fail or not; from whence appears that the *Possessor* of a *Bill* is the true Owner. So *Morus* also sayes, *The Remitter may countermand and forbid the payments to him that first had the Order.*

VI. When a *Bill* is made payable to a certain nominated *Person*, he for whose account the *Bill* was remitted, (i. e. the *Remitter*) as the principal Owner and true Proprietor of the *Bill*, may Revoke his Order, and
cause

cause it to be paid to another, if his order come before it be paid, and the *Acceptant* is obliged in such a case, to deposit the Moneys in other Hands, till such time as it shall be made appear who of right ought to receive it; or if he hath order from the *Remitter* he may suffer the *Bill* to be protested for Non-payment: But when a *Bill* is made payable to Order, then the *Remitter* makes him, to whose Order it is payable, sole-master of the *Bill*, who hath Power and Authority to dispose of it as he will, and the *Acceptant* must pay it to his Order.

VII. Bills that are payable at such a Precise day, as on the last of *June*, &c. are paid the same Day by those that are punctual; but if their Day of becoming due be calculated according to *Usance*, or after the date or sight, then the Payment is not usually made till the day after; but yet the Payment may be made the very same Day, without any the least Prejudice to the Payer.

VIII. Bills payable at sight, or two or three dayes after, may be paid presently so soon as presented, without any Prejudice to the *Payer*; whereas it may be a great Prejudice to the *Possessor* of the *Bill*, to stay for the Moneys till the *Respit* dayes be expired.

IX. All Bills must precisely and punctually be paid within the dayes of Respit, after the day of their becoming due: These dayes of Respit, are in some places more, in some fewer, and are introduced by Custom, or ordered by the Magistrates; and any *Possessor* of a *Bill* may safely, without any prejudice, wait till the last of these days, without protesting for Non-payment, yea, is obliged to wait so long.

X. At *Amsterdam* six Respit dayes are allowed, after the day of the Bills becoming due, inclusive of all *Holy-dayes* and *Sundayes*, &c. and if the payment be made on the sixth day by the *Acceptant*, its accounted good and punctual payment, wherewith the *Possessor* must be satisfied; and if the *Bill* be payable in Bank, and the six dayes of Respit are not fully expired before the shutting of the Bank (in order for the making of new Books) then the *Acceptant* may defer the payment till the third day after the opening of the Bank again, and so in case the *Bill* fall due when the Bank is shut; and all this time the *Possessor* of the *Bill* can make no *Protest*, nor will his not making *Protest* be any prejudice to him.

NB, at *Rotterdam*, *Middlebrough* and *Amwerp* are also (including the *Holy-dayes* and *Sundayes*)

Sundays) six Respit dayes allowed: But Bills at sight must be paid within twenty four Hours.

But at *Colne, Breslaw, Newrenbrough* and *Venice* the *Sundays* and *Holy-dayes* are not included in the six Respit dayes allowed after the day of the Bills becoming due.

In some places fewer Respit dayes are allowed, as at *London* three dayes, and no more: At *Frankford*, out of the Fair time, four dayes: At *Leipzicke* out of Fair time, five dayes; and at *Ausburge* five; and in these places all Bills payable at sight must be paid within twenty four Hours.

Other places have more Respit dayes allowed, as *Naples* eight, *Dantzick* and *Konigsbroughten*, *Paris*, *Roan*, *Rochel*, *Nants* *Bordeaux* ten, and all *France*. But in these last, the day of the Bills becoming due is reckoned for the first of the ten, *Sundays* and *Holy-dayes* are included: *Hambrough* allows twelve dayes, including the day of its becoming due, and in regetd no Protests can be made there on *Sundays* or *Holy-dayes*, if the twelfth day fall on either, the Protest may be deferred till the next: *Stockholme* allows also twelve dayes, *Genua* thirty dayes, and all *Spain* fourteen dayes. But in *Italy* are no dayes at all agreed upon, but the Possessor of the Bill may Protest or not Protest according to his discretion.

XI. All Bills of three hundred Guilders *Flemish*, and above, must be paid in Bank at *Amsterdam*, notwithstanding any conditions to the contrary, upon pain of forfeiture of twenty five Guilders, and the Bill to be accounted unsatisfied.

XII. Where a Bank is erected, there all *Bills* whatever ought to be paid in Bank, whether for greater or lesser Sums, or for what Species soever they are.

NB, By reason of the difference of Currant and Bank Moneys, this is scarce Practicable at *Amsterdam*, or in any other place where such a difference is, unless a Bank Currant were erected also, which might be very advantagious every way : But I refer the Readers herein to the Author, and proceed.

XIII. *Bills* that are payable to any certain nominated Person that hath an account in Bank, are ordinarily satisfied without demanding the *Bills*, seeing the payment thereof does alwayes in Bank remain upon Record.

XIV. The falling or rising of the *Aggio* of Bank Moneys is to the profit or loss of the Possessor of the Bill ; for the Bills payable in Bank

Bank must be paid by the Acceptant, let the *Aggio* run as high as it will; and he is obliged to pay no more than the Bill requires, let it run as low as every it can.

XV. Bills payable in currant Moneys out of Bank, must be paid in large (Gross) Moneys, and not in small pieces, as *Stivers*, &c.

XVI. The rising or falling of Moneys where the Bill is payable in currant Moneys is also at the hazard of the Possessor of the Bill, as in *Rule 14*.

XVII. The Acceptant must pay no Moneys upon the simple advice of the Drawer, though it be expressly said to be payable to a certain Person, unless the Bill also be presented, and he hath accepted it.

XVIII. A Bill payable to order must not be paid to any, but to whom it appears by the Endorsement that it is payable.

XIX. An Acceptant may pay to him to whom the unaccepted Bill is endorsed, though the accepted Bill be not endorsed to him; but then both the accepted and the endorsed Bills must be delivered to him, and

he must look well, and see that the accepted Bill be endorsed to no other.

XX. If a Bill be made payable to *A. B.* or order, a circumspect Acceptant will not directly write it of in Bank to *A. B.* till it appear that he is still the Possessor of the Bill, and *A. B.* is obliged at his request to endorse the Bill upon himself, and to write, *The Contents hereof please to write to my account in Bank, &c.*

XXI. When a Bill payable to order is endorsed by divers, and the Acceptant will at the time pay it in Bank, then let him observe, that in his Assignment for the writing it of in Bank, he order the Payment to the Presenter, or to him that endorsed it last, for him to whose order it is payable. As for Example: A Bill payable to the order of *D.* is endorsed by *D.* to the order of *E.* by *E.* to the order of *F.* by *F.* to the order of *G.* *G.* demands payment, let him then assign *G.* for *D.*'s account, who is obliged for all the Endorsers, and is thereby satisfied, as being made payable to his order.

XXII. A circumspect Acceptant will pay no Bill that is made payable to order, but upon the delivery of the accepted Bill.

XXIII. When a *Bill* payable to order is not accepted by him that was to accept, nor any other, he may notwithstanding pay it at the time appointed to him that shall present the *prima* or *secunda* *Bill*, if endorsed upon him, and having satisfied the one, he is not obliged to satisfy the other, though it be made payable to another, or endorsed upon another.

XXIV. If at the day appointed payment be demanded for two *prima* and two *secunda* *Bills*, both of one Sum, Date, and to the same Presenter, Possessor or Order, and payable at the same time, and the Acceptant hath only advice from the Drawer, that he drew but one Sum of him; if neither of the *Bills* be accepted, then he must be circumspect in the paying, and may, if they both be in one hand, satisfy the one, and receive the *Bills*; but if they be in two different hands; or endorsed to two several Persons, then its better to suffer both to be protested, and must upon no account satisfy either of them, but upon sufficient security for the Restitution of the Sum that he pays, if it be wrong; together with the Re-change and Charges.

XXV. Though a *Bill* be made precisely payable to a certain Person, yet without any

Prejudice the same may be paid to the order of that Person.

XXVI. An Acceptant must be careful in paying a Bill that is payable to divers and several Persons, and must not pay the same but to them all, or to the order of them all.

XXVII. No Bill can be discounted, or otherwise satisfied than in Moneys, without the voluntary consent of the Possessor.

XXVIII. An Acceptant is not simply obliged at the day of Payment to pay the Bill he hath accepted to the Presenter thereof, though it be made payable to order, unless it be endorsed to him; and in case any thing material in the Endorsement be wanting, he may demand sufficient security of the Possessor or Presenter, That none afterwards shall demand the same; or he may cause the same to be writ of in *Bank* to the account of him who shall afterwards produce the Bill with the formal Endorsements, or do any thing that is equivalent to this.

XXIX. He that hath accepted a *Bill* under any Limitation or Condition, is not obliged otherwise to satisfy it, than according to that Condition and Limitation.

XXX. He that hath accepted a *Bill* under Protest, that he supposeth he hath already accepted one of the same Contents, and for the same Sum, and that in case it be found so, he declares, that this Acceptance shall be null and void, he is not obliged for the payment, unless the other *Bill* that he accepted before for the same sum, &c. be delivered to him, and that sufficient Security be given, that none shall demand any more by virtue thereof.

XXXI. *Marius* his advice is, never to part with the *Bill* of Exchange till it be paid, not to deliver it up upon an Assignment, or any other *Bill* or *Bond*, but first receive his Moneys by Assignment before he give in his *Bill*, and the reason is this; *In case I do not instantly receive the Moneys upon the assignment, if I have parted with my Bill, I cannot easily form a Protest.*

XXXII. Further he asserts, that though the dayes of Respit be expired, yet a Protest may be entred, and the day on which it falls due, is accounted part of the Time limited by it: But its best, he sayes, to protest within the three dayes of Respit (*viz.* only three dayes being allowed at *London*) but after it must also be protested, because

without this there is no further course at Law can be taken, either with the Acceptor or the Drawer.

XXXIII. If a *Bill* be made positively payable to such a Man, and not to such a Man or his Order, then an assignment of the *Bill* will not serve the turn, but the Moneys in the strictness of the Letter must be paid immediately to that same Man, and no other, else the Acceptor may be forced to pay it twice; nor is it sufficient that such a Man write his Name in a Blank on the back-side of the *Bill*, unless the man himself appear in Person.

XXXIV. Every Promise of Payment in Bank is accounted for good and sufficient Payment.

XXXV. To Discount or to Rescouter is good and sufficient payment, if it be of a due and liqued Debt.

XXXVI. An Acceptor may after payment at the time, according to the tenure of the *Bill*, and if the Possessor will not receive it, nor discharge upon it, the Acceptor may deposit it; and then though the *Possessor* Protest, the *Drawer* shall have no damage.

CHAP.

CHAP. XVII.

*Of Protesting of Bills for Non-Payment.**Rule I.*

THough the Acceptant be absolutely obliged to the payment of those Bills that he accepts; yet at the day of payment, the Payment cannot be demanded or exacted with Rigor, if the Drawer or Endorsers be sufficient, and his Credit untainted: but the Possessor must first try if he can procure the Value, the Charges and the Re-change from the first Drawer or Endorser peaceably and quietly.

II. The Possessor hath no redress on the Drawer or Endorser, unless he can make it appear that he made diligent Demands of payment before the Respit dayes were expired, and could procure none, and therefore did protest for Re-change and Charges within the limited time.

III. In all (or most) Towns of Trade, its ordered as a Law, in how many dayes after the *Bill* become due, the Protest must
be

be entred and made, in case the Possessor will not forfeit his Right against the Drawer or Endorser.

I V. Before any man can protest for Non-payment, demand of payment in the limited time must be made, and that first simply by the Possessor himself or his Servant, or some other in his Name, and then if payment do not punctually follow upon these Demands, he must solemnly demand it by the Notary Publick and two Witnesses.

V. This formal and solemn demanding of payment must at farthest be on the last of the Respit dayes, and that so timously (if it must be done in *Bank*) that the Acceptant may have sufficient time to order it.

VI. When the last Respit day falls on a *Sunday* or *Holy-day*, then its safest to protest the day before.

VII. Payment of *Bills* that were not accepted neither simply nor *supra* Protest, may be demanded at the day of payment, and if payment be denied, then a new Protest may immediately be entred for Non-payment, and both the *Bill* and *Protest* may be returned.

VIII. When a Bill that is made payable after date, or at a certain day, is not presented for acceptance till after the same become due; then if payment be denyed, the Protest for Non-payment must be made on the last Respit day at farthest (after it became due) and not after it was first presented.

IX. A punctual Payer will discharge his Bills on the second or third day after they are become due, and they are but Botchers that defer till the last respit day, under pretence that the last Respit day is the true day of Payment; whereas these Respit dayes are allowed the Acceptant not for Wantonness, but for Conveniency as well of the Possessor as the Acceptant himself, that the one may demand in time, and the other provide in time to discharge his Bills; yet the Acceptant may if he will defer and delay it till the last day.

X. If the Possessor of a Bill protest not till after the last respit day, he loseth his Right of having Redress on the Drawer or Endorser by his negligence, except in the case of the shutting the *Bank*.

NB, The case seems to be very hard when the Bill by any Miscarriage of the Post, or other Impediment is detained so long (or it may

may be wholly lost) till the respit dayes are expired, and then the designed Acceptant refuseth either to accept or pay : and what is then to be done ? its hard that the Remitter should lose his Moneys, and lose it he must, if the Drawer or Acceptant be Knavish ; for he can in no wise lay any Action against either of them, and yet it is manifest there is a Debt owing to him ; this then being too great an Encouragement for Knaves, it were to be wisht, that some other good order for preventing loss to Honest and Well-meaning Persons were invented, and enacted as an un-repealable Law.

XI. The Possessor of an endorsed Bill for the account of the Drawer himself, is obliged to protest within the Respit dayes, or he looseth his Remedy of the Endorsers.

XII. In the Protest for Non-payment, the day and date when the Protest was made must be legally exprest, and it ought also to exprest, how many dayes after it became due it was before the Protest was entred, and also what the custom of the place is concerning Respit dayes, that it may appear on the one hand, how civil the Possessor hath been to the Acceptant, and on the other, how that he hath not by his negligence lost his Right.

XIII.

XIII. When a Bill is protested against the Person of the Acceptant, the Notary Publick ought to know him well, and make himself acquainted with him; and if it be made against his House, he ought to inform himself well, whether such a Person live there or not, and if he can neither find his Person nor his House, nor enquire where he may be found, then he must protest with what diligence and care he enquired after him, and then protest for the Rechange, Charges and Damage to be re-paid him by the Endorsers or Drawers, or either of them, as the Possessor thinks best.

XIV. If the Notary meet with his Person, or any of his House, he must clearly express what Answer they make to him, and what the Reasons are that he can procure no satisfaction.

XV. When payment is demanded of one of the same Name with him to whom the Bill is directed, and he denies that ever he accepted any such *Bill*, then the Possessor is obliged to enquire if any other of the same Name dwell in the place where the payment should be made, and if he can find none, then he must protest against him, and if he find two or more, and they all deny that they accepted

cepted any such Bill, they must both or all be protested against.

X V I. Its no dispect or discredit to any to suffer a *Bill* to be protested for Non-acceptance because it stands in his own free will to accept or not ; but to suffer an accepted Bill to be protested for Non-payment, and returned, (it may be cloaked as it will) is a great discredit to the Acceptant.

X V I I. If the Acceptant pay a part of the Bill, and promise the rest in a few dayes, within the Respit dayes, if he do not within that time satisfie the whole, the Possessor may protest for the whole, and is not obliged to return what he hath received back again to the Acceptant ; but he must observe the Laws of Exchange, that is, demand of the Drawer, &c. the Rechange and Charges, &c. for the Remainder that was unsatisfied.

X V I I I. If an Acceptant is unable or unwilling to pay his accepted Bill, and the Possessor is forced to protest against him, and he returns answer, that he is willing and ready to pay part, and that the Possessor may for the rest protest and return the Bill if he please ; then the Possessor does very foolishly if he refuse to receive what is offered

ed to him, be it more or less, but yet he must protest for the whole.

X I X. If an Acceptant of a Bill of Exchange, after he hath accepted, should prove insolvent, or be publickly reported to be failed, so that he absent himself from the Exchange, or if there be just ground of fear and jealousies that he may be insolvent before it may fall due, the Possessor of the Bill may demand better security by a Notary Publick, and if that be not given, he may protest and send the Protest away by the next Post; and when the Bill is due, if not paid, you must protest again for Non - Payment, so doth *Marius* advise.

X X. The same *Marius* adviseth, that all Protests be made in the day time between Sun and Sun, and if it can be while the Shops are open, or not before they are open, *i. e.* between six and six a Clock in Summer, and between Sun and Sun in Winter.

X X I. If a Bill protested for Non-Payment be returned on the Drawer, and the Drawer discharge the same, then both he himself and the Acceptant are discharged from the Remitter and Possessor, or any other, but yet the Acceptant (if he accepted) is not discharged from the Drawer, but the
Drawer

Drawer hath the same Right and Law against the Acceptant that the Possessor or Remitter would have had, if the Drawer had not discharged it.

XXII. Acceptants by acceptance simply do so far oblige themselves, and make themselves Debtors thereby, that if the Drawer fail, they have no Remedy or Redress against any of the Endorsers; and the case is the same, if the Acceptant or any other accept *Supra Protest* in honour of an Endorser, or any other Person, if that Endorser fail and be insolvent before or afterwards.

XXIII. If the Acceptant of a Bill fail, the Possessor is not obliged to wait till the last Respit day before he protest, but may protest sooner when he pleases, after he knows of his failure, and must presently give advice thereof to the Remitter, or else the Drawer is not obliged to pay Interest and Charges.

XXIV. Bills of Exchange protested, or to be protested, are liable to no Arrests or Attachments, but if arrested, the Notary Publick may make a Protest, or if protest, deliver the Protest, or the Copy thereof, and the Bills to the Possessor, if he demand them, and the Possessor notwithstanding any Arrest

arrest may do therewith what he pleaseth, unless the Acceptant will make appear, that he either hath or will pay the Value according to the Tenure of the Bill.

XXV. There is nor can be any danger by protesting Bills two or three dayes before the Respit dayes are expired; but because the Respit dayes are not certain in many places, its therefore surest to protest by times, than to hazard the loss of the Law by too long a delay.

CHAP. XVIII.

Of the Payment of Bills supra Protest for Non-Payment.

Rule I.

VVhen a Bill for Non-Payment is protested, then any man may freely, even he that suffered the Bill to be protested, or he that did protest, pay and satisfie the same *supra* Protest in honour of the Drawer or Endorser.

II. An Acceptant that hath freely and willingly accepted a Bill cannot afterwards

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satisfie

satisfie the same *supra* Protest in honour of an Endorser, because he as Acceptant is already obliged to the Endorser; but an Acceptant, that hath not yet accepted the Bills, may discharge those Bills in honour of the Endorser or the Drawer, as if he were a third Person unconcerned.

I I I. When an Acceptant is drawn upon for the Drawer's account, and the Drawer hath not made Provision for the discharge thereof, and is fearful that he shall have some trouble in re-imbursing himself, in this case he need not freely and willingly pay the Bills that he freely and willingly accepted, but may protest the Bills for Non-Payment, and then he himself, or any other for him, may pay them *supra* Protest, causing the Right and Title to be transferred to him to prosecute the Drawer, by which means he may more easily convince the Drawer, and prevail with him to make Restitution of the Value he received, than perswade him to reimburse what he hath paid for him.

I V. No man must pay a Bill *supra* Protest for Non - Payment, before he hath declared before a Notary Publick (either the same that made the Protest, or any other) in whose honour he discharges the Bill, whereof the Notary, after the Protest, or
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in another particular Instrument or Act, must give an account to the Parties concerned.

V. He that pays a Bill *supra Protest*, doth immediately succeed the Possessor in the Right and Title thereof, although there be no formal transport thereof, nor no *Crisis Actionis* from the Possessor to the Payer; yet to prevent all disputes, its more advisable for the Payer *supra Protest*, that he cause the Possessor of the Bill to make a Transport of his Action and Right to him formally.

VI. The Possessor of a Bill protested for Non-Payment, is not obliged to accept of the Payment of a third Person *supra Protest*, either in honour of the Drawer, or any Endorser, unless he demonstrate and declare, that the honour of that Bill was especially recommended to him, and then he is fully obliged to accept of the Payment absolutely, as if the true Acceptant had paid it.

VII. The Possessor of a Bill that accepts of Payment *supra Protest*, is obliged to transport his Right to the Payer, as well against the Acceptant, as against the Drawer, or any Endorser, in whose honour he pays the Bill, yea, and against all others against whom the Possessor of the Bill, by virtue of that Bill hath any Right.

VIII. But if the *Bill* protested be endorsed by the *Possessor's* Correspondent, by whom the *Bill* was sent to him, then the *Possessor*, if circumspect, will accept of no payment in honour of the Endorsements, but under express condition, That the Payer shall have no Redress or Remedy against the said Correspondent.

IX. The *Possessor* of a *Bill*, protested for Non-payment, is not obliged to part with the *Bill* out of his hands to the Payer *supra* *Præmissis*, before he be actually satisfied and paid.

X. He that honours a *Bill*, protested for Non-payment, in honour of the Drawer, hath no Remedy against the Endorsers.

XI. He that honours a *Bill*, protested for Non-payment, in honour of an Endorser, hath his Redress and Remedy not only against the said Endorser, but against all that were before him, and the Drawer also, but he hath no Action, Law nor Right against the Endorsers, that follow the Endorser for whom he was willing to pay the *Bill*.

XII. When divers or several Persons present themselves to honour a protested *Bill* for

for Non-payment, then he is chiefly to be accepted that offers to pay in honour of the Drawer, and next to him, he that offers to pay for the earliest Endorser.

XIII. When a *Bill* is paid *supra Protest* in honour of the Endorser, and the Acceptant counsels or adviseth him, that there is another (or he voluntarily offers himself) that will discharge the *Bill* in honour of an earlier Endorser, or of the Drawer, and this before the Payer hath re-imburfed himself by re-drawing, then the first Payer is obliged to accept of the Payment of the second, and to transport his Right to him, but the second Payer will be obliged to pay not only all the former Charges, but half Provision also.

XIV. Men ought to be circumspect in accepting *Bills* or paying *Bills* in honour of the Drawer, and yet more circumspect when its done in honour of an Endorser, and should in no wise accept any *Bills* or pay any *Bills supra Protest*, but in honour of those with whom they are well acquainted, and have had good Correspondence, & whose Sufficiency and Generosity is sufficiently known.

XV. If the Acceptant be sufficient to pay the *Bills*, and yet suffers them to be protested

for Non-payment, then he that will pay in honour of the Drawer, must or should diligently enquire of the Acceptant, what Fundamental Reasons he hath to suffer the *Bills* he accepted to be protested; for the Reasons may be such as might dissuade others from paying them *supra Protest*.

X V I. If the Protest for Non-payment be sent away, then its not in any wise advisable for any man to offer to pay the *Bill supra Protest*, though the *Bill* be not sent away, unless the *Possessor* of the *Bill* will give sufficient security for the Restitution, in case the Drawer or Endorser have re-paid the Value and Charges, &c. upon the presenting of the Protest, or otherwise agreed with the Remitters.

X V I I. Circumspection is also required in the Payment of *Bills supra Protest*, that are made payable to order, and after some dayes sight, when there hath been any negligence in demanding Acceptance; and above all, men should be fearful to meddle with the Payment of any *Bills supra Protest*, that were not protested in time, within the dayes of *Respit*.

NB, As much Circumspection is here necessary in the honouring of *Bills for Non-Payment* as was for the honouring of *Bills for*
None

Non-Acceptance, whereof we have treated,
Chap. 14.

XVIII. When an Accepted Bill is protested for Non-payment, and the Acceptant is sufficient, then there can be little difficulty in paying and discharging the same *supra Protest*, because if neither the Drawer nor Endorsers will nor can re-pay the Value and the Charges, &c. yet the Acceptant remains obliged.

XIX. A Circumspect Acceptant resolving, for Reasons known to himself, to suffer the Bills to be protested for Non-payment, and to return them on the Drawer, will seek for some known and trusty Friend that shall pay the Bill *supra Protest* in honour of the Drawer, and receive the Transport of the Action and Right from the Possessor, and by him seek his Redress on the Drawer.

XX. If a Bill *supra Protest*, in honour of the Drawer or Endorser be paid, then the Payer usually (if he hath no effects in his hands) redraws the same directly on him, for whose account he paid, and he augments the Sum mentioned in the Bill, with the Charges, Courtage, Postage and Provisions.

XXI. When he that payes *supra* Protest, hath Revalued or Redrawn, he is obliged with the advice of the draught, to send the protested, and by him paid Bills of Exchange, and the Protest, and the Instrument of his offering to discharge the same, and the Acquittance for the discharge thereof, to his Friend, to be shown to the Person in whose honour he paid, and to demand the Acceptance and Payment of his Bills on that account.

XXII. If a Bill be paid *supra* Protest in honour of the Drawer, with the Obligation of any or all the Endorsers, then the Payer is obliged to send the Protest, &c. to all and as many of them as he will keep obliged to him, and to advise them, that to spare them trouble, and to prevent the respective Losses of the Rechange, he hath redrawn upon the Possessor, they remaining still obliged — But such an honourer of a Bill doth distrust the Drawer, and therefore will get small Thanks for his Pains.

XXIII. The Drawer or Endorsers of a Bill protested for Non-payment, and *supra* Protest honoured by a known Friend, or not, being Redrawn upon, for the Re-imbursment, is obliged to accept and honour the

the Bill with punctual Payment, or else he is Guilty of the greatest Incivility and Ingratitude imaginable, and if he should refuse, he may be compelled to it, and to Reimburse all the Charges and Damage, the Drawer having got a transport of the Right of the first Possessor to himself.

XXIV. If a *Drawer* make any difficulty, alledging that his Bill was accepted, and that therefore the *Remitter* must seek his Redress on the *Acceptant*, &c. yet the *Remitter* is obliged first to try what the *Drawer* can do, and then to look to the *Acceptant*.

XXV. If a *Drawer* suspect^d that his Bill, though accepted, will for Non-payment be protested, he must look about to procure some that will, in honour of himself, accept and pay the Bill, and to receive from the Possessor a cession of his Action and Right against the *Drawer* and *Acceptant*, and so by him endeavour to procure right of the *Acceptant*; for upon refusal, Execution lies always ready.

XXVI. He that hath accepted a Bill *supra* Protest in honour of the *Endorser* or *Drawer*, and pays the same at the day appointed, he is accounted also to have paid the
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the same *supra* Protest; and its unnecessary to make a new Protest for Non-payment, though now Use and Custom hath brought it almost into Fashion in some places, that Bills protested for Non-acceptance, must also be protested for Non-payment.

CHAP. XIX.

What the Possessor of a Bill Protested for Non-payment, and not discharged supra Protest, hath further to do.

Rule I.

IN case the Acceptant do not discharge his accepted Bills at the day appointed, then the Bills with the Protest must be returned.

NB, some hold, that its not necessary to send the Bill back again, if the Drawer live at a great distance, or have no certain place of abode; Others the contrary. But if the *Drawer* and *Possessor* understand one another well, and the *Drawer* would force the *Acceptant* to the payment, then let him give Security to the *Possessor* conditionally, if he cannot procure payment of the *Acceptant*,

to stand obliged for the Sum, and then let him neglect to protest on the last Respite day, whereby having lost his Redress on the *Drawers* and *Endorsers*, he hath only the Acceptant to look upon, and by virtue of the Protest can force him to the Payment, if he be able.

II. The *Possessor* of an endorsed accepted Bill, protested for Non-payment, and not discharged *supra* Protest, hath his Redress on the Drawer and all the Endorsers.

III. Its usual, that the *Possessor* of such a Bill, protested for Non-payment, and not *supra* Protest discharged, doth redraw the value on him, from whom he received the Bill, whether he be the first Remitter, or any other Endorser; but if the same that sent him the Bill be not to be found, or be fail'd, or if it be more convenient for the *Possessor*, or to pleasure a later Endorser, he may well draw the value upon some other earlier Endorser, and demand of him, or of the Drawer, restitution of the Value and the Charges; and in case of refusal compel him to it.

IV. But however, the Person from whom he received, or with whom he negotiated the Bill, is obliged to make Resti-
tution,

tution, and he again hath his Redress on the Acceptant, Drawer, or any other earlier Endorser.

V. The *Possessor* of such a Bill, must not directly demand Restitution from the Drawer, without first giving notice of the Non-payment and Protest to the Endorsers, lest he lose his Redress on them.

VI. Its the duty of the *Possessor* of such a Bill, not only in case of Protests for Non-acceptance, but also for Non-payment directly without delay, to advise the Remitter thereof, and to send Copies of the Protest to him, that he may secure the Restitution from the Drawer.

VII. The *Possessor* of such a Bill is obliged instantly, without delay, to demand restitution of the Drawer, or Endorser, or Remitter; nor must he for his own pleasure, or at the Acceptants request, neglect to send the *Protest* by the first Post after, and the *Bill* by the second Post at furthest.

VIII. In case the last Respit day be on a Post day, and Payment is demanded, to which the Acceptant answers, that it either is already done in Bank, or will that day be done, then the *Possessor* may delay to protest,

test, or having protested, to send it away by that Post; and on the contrary, if he suspect the Acceptant or the Drawer, he may protest, and send the *Protest* away that same Post-day.

I X. The *Possessor* does not well, if he in such a case, having protested before, or on the last Respit day, re-draw the same on that day, or send the *Bill* with the *Protest* away.

X. But if the Acceptant, after the last Respit day, or any other third Person offer to pay the *Bill*, in case the *Possessor* hath sent the *Bill* and *Protest* away, he is not obliged to accept of their offers, especially if he hath redrawn the Value; though he may have the *Bill* and *Protest* yet by him.

XI. No *Bills* of Exchange protested, or to be protested, can be arrested in the Notaries hands, and the Notaries may, notwithstanding such an Arrest, (yea, and must if demanded) deliver the *Bill* with the *Protest* to the *Possessor* to proceed therein, according to his pleasure, except only that the Acceptant can sufficiently demonstrate that he hath paid the Sum fully, in which case the Notaries are bound to obey the Arrest.

XII. Nor need the Acceptant arrest his *Bill and Protest, &c.* it being enough for him to protest again against the *Possessor*, and to declare that he hath offered full satisfaction to the *Bill*, which *Protest* he must send to the *Drawer*.

CHAP. XX.

To what the Drawer and Endorsers of Bills returned with Protest for Non-Payment, are further obliged to.

Rule I.

THe Acceptant cannot be compelled to the Payment of a *Bill* unless by him accepted; nor the *Drawer* or *Endorser* to the Restitution, unless the *Bill* be returned with the *Protest* for *Non-payment*.

II. The *Drawer* or *Endorser* is obliged at the presenting of the *Protest* (if it be in all the Circumstances rightly made, and in the right time, according to the *Laws* and *Customs* of the place where the *Payment* was

to be made) to give present and punctual satisfaction, which consists in the Re-payment of the Value, the Re-change and Charges, as Courtage, Provision, and for the Protest and Postage.

III. When the Value of the Bill is re-drawn, augmented with all the Charges, then the Drawer and Endorser are obliged to pay the re-valued Sum, though the same were not taken at the lowest Course; and so in like manner when the Re-valuer or Re-drawer hath negotiated a Bill with any other, which is payable to a third Person, but if he discount the Sum, and make it payable to the Remitter, then the Drawer or Endorser need pay no more than according to the Course that day; and if that day the Protest was made, and the Post after there was no Course made upon sight, but at time or usance, then the Course upon time must be reduced to the Course upon sight by subtracting a reasonable Interest from the Course upon time, unless the Drawer and Remitter could agree that the time should run out before the Payment should be demanded.

IV. The Drawer and Endorser are obliged in the Restitution of the Value, according to the Course of Exchange, though the full Sum of the Bill be not re-drawn.

V. They are also obliged to re-pay Provision, Postidge, and the Charges of the Protest, though the full Sum be not re-drawn.

VI. The Provision that the Drawer must pay for a protested Bill of his, is due half to the Protester, and half to the Remitter, &c.

VII. The Drawer or Endorser are obliged to pay no more than according to the Course of Exchange, though the Re-draught be at a lower Course than when it was first drawn or endorsed.

VIII. The Drawer of a Bill payable to order is no further obliged (though the protested Bill were endorsed in several places, and returned the same wayes) than in the Payment of the Re-draught from the place where the Bill was to be paid, directly to the place where it was drawn, and at such a Course as it was at the time of protesting; and so the Endorsers are no further obliged than in the Course of Rechange from the place where it was to be paid, to the place directly where it was endorsed by them.

IX. When a Bill is in one place, successively endorsed by several Persons, and is returned with Protest to the last Endorser, he is obliged

obliged to make satisfaction instantly, either himself or by some other Endorser before him, or for him; and if he pay, and satisfie it himself, he is not then to demand Provision or Charges of the other Endorsers or Drawer in the same place, more than he himself hath actually paid.

X. The Remitter or Possessor of a Bill protested for non-payment is not oblig'd necessarily to compel the Drawer or Endorser of a Bill to the Restitution, if he had rather seek his Redress on the Acceptant; and so on the contrary, he is not necessarily obliged to look on the Acceptant, when he had rather seek his Redress on the Drawer or Endorser, nor is he obliged to give them any time for the Payment, but may, when the Payment is not punctual, proceed against which of them he pleases, by Arresting either their Persons, or Goods, or both.

XI. No Drawer or Endorser is obliged to make Restitution at the sight of the Protest alone, nor at the sight of the Protest and the unaccepted Bill, when one of them hath been accepted, but he is obliged to give sufficient caution and security to the Remitter at the sight of the Protest alone, and to make Payment when both the accepted Bill and the Protest are presented.

XII. No Drawer or Endorser is obliged at the presenting of the Protest for Non-payment, made before the last Respit day, when the Acceptant hath not absolutely denyed payment, but only desir'd delay till the last respit day, to give any caution or security, much less to re-pay the Re-change and Charges, &c. if he can prove that the Acceptant (or a third Person *supra Protest*) would on the last respit day pay the same, and that the Bill had effectually been paid if it had remained at the place of Payment so long.

XIII. No Drawer or Endorser is obliged to pay the Re-change of an accepted Bill, if the Protest were not made within the limited dayes of Respit.

XIV. If the Payment of a Bill be demanded on the day it becomes due, and the Acceptant is commanded by Authority of the Magistrate not to pay it, yet the *Possessor* may protest for Non-payment, and the Drawer is obliged to pay the Rechange; but if for any Accidental Occurences the Payment cannot be demanded, (as perhaps a City may be besieged, and the *Possessor* is not allowed to go in to make his Demands, &c.) then the Drawer is not obliged to make Restitution, but the whole Sum runs upon the
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Risco and hazard of the Possessor or Remitter of the Bill.

XV. If the Endorser unadvisedly or ignorantly makes Restitution for a Bill protested for Non-payment after the Respit dayes, and the Drawer refuseth to make him satisfaction, then the Endorser hath no Redress, but to demand Restitution again from the Person to whom he paid the Value.

XVI. The Drawer, or he that makes Restitution for a Bill protested for Non-payment within the dayes of Respit, must remember to demand *Cessionem Actionis* from the Possessor against the Acceptant, whom he may compel to give satisfaction.

XVII. It many times happens, that the Possessor of an accepted Bill, protested for Non-payment, is by the Drawer, after Restitution made, desired under pretence and protest of the Drawer's refusal to make Restitution, to compel the Acceptant to give satisfaction; but it is very unhandsome for a third Person unconcern'd to receive *Cessionem Actionis*, and seek his Redress on the Acceptant.

XVIII. When the Drawer hath paid the Bill that was returned with Protest for

Non-payment, the Drawer is thereby freely discharged against all Parties to whom the said Bill was made payable, either immediately in the Bill, or mediately by Assignments, were they never so many; nor can any one any way molest or trouble the Drawer, nor can any one of them prosecute the Acceptor on that account any further; but yet the Acceptor is not totally discharged if the *Bill* were for the Drawers or any others account, to whom the Acceptant should be responsible.

CHAP. XXI.

What an Acceptant of a Bill that he hath suffered to be protested for Non-payment, and is returned with Protest, is obliged to.

Rule I.

IF the Acceptant, at the day of payment, refuse to discharge Bills he accepted, if the Bills be returned to the Drawers with Protest, to demand satisfaction, and the Drawers refuse to do it, returning the Bill again, then the Possessors of the Bills have as much Right and Law against the Acceptant,

tant, as against the Drawer himself, viz. their Persons and Goods may be Arrested and Attached.

I I. Though the Possessor of a Bill hath no redress upon the Drawer, if he after the days of respit cause the Protest (for Non-payment of an accepted Bill) to be entred, yet this notwithstanding, if the Drawer be yet in credit, the Acceptant cannot be compelled by Arrests or Attaches, to make satisfaction, till the Bill, sent with Protest to the Drawer, is again returned on the Acceptant.

I I I. A Bill made payable for the account of the Drawer himself, not paid at the due time, but protested for Non-payment, need not be returned on the Drawer, but he may instantly without delay, compel the Drawer to make satisfaction by Arrests and Attaches where-ever he finds him.

I V. An Acceptant of an endorsed Bill, protested for Non-payment, cannot be proceeded against by Arrests and Attaches, if any one, or all the Endorsers refuse to make satisfaction, unless the Drawer himself also refuse to do it, and this be proved by good Evidence.

V. The Acceptant of a Bill, returned with Protest for Non-payment, and again returned on the Acceptant, is only obliged to pay the Exchange and Rechange, Provisions and Postige, and no other Charges more.

VI. The Exchange is reckoned, according to the course at sight at that time, and in that place where the Protest is made, to the place where the Payment must be made by the Drawer, and if it be not paid there, then the sum is again increased, the Provision and Postige being again added, and then the course is reckoned again upon the whole sum, according as it shall be at that time and place upon sight, to the place where the Bill is to be paid, and the Acceptant is obliged to pay the Rechange, and all the Charges, although the Parcel was not effectually negotiated and redrawn, *i. e.* Rechange, Provision and Postidge must be twice paid, &c. As,

VII. Provision twice for the Exchange and Rechange.

VIII. The Charges are no other than Postidge, and for the Protests, unless the *Acceptant* forced (by his delays and excuses) the *Possessor* of the *Bill* upon some unnecessary Charges,

Charges, which the *Acceptant* is obliged to pay, but no extraordinary Charges, as for Travelling, Bribing and Spending, &c.

IX. He is obliged to pay Interest, if he do not presently without delay satisfy the returned Bill, which is to be reckoned from the day that the Bill was due upon, to the time of its discharge, and the *Possessor* may charge his Account with Interest after the rate of 8 per Cent. per Annum, which any Creditor may charge his tedious Debtor with, when he payes not punctually at the time.

X. Though the Notary Publick does declare, and in the Protest express, That he protests for all Damages, &c. that shall accrue, yet no *Acceptant* is obliged to make any other Loss or Damage good, but what are above specified, as the Rechange, Provisions, Protests and Postidge, in manner and form as before declared; nor can the *Possessor* with any Equity or Law compel the *Acceptant* to make good any loss or damage that he pretends to have sustained for want of punctual payments, as the frustrating of his Designs, the loss of some convenient and profitable Opportunity, or any such like thing.

XI. No prudent man will *supra* protest
L 4 accept

accept and satisfie any Bill that is returned unsatisfied from the Drawer, unless he hath expresse order to do it in his honour.

XII. Though the *Possessor* of a Bill protested and returned from the *Drawer* unsatisfied, hath thereby Right and Law against the *Acceptant*, and may proceed against him, by Execution, Arrest and Attach, &c. yet he is not necessarily obliged thereto, but if he will he may, at the *Acceptant's* request, spare him, and seek his redress again upon the first *Drawer*, unless he hath expresse order to the contrary.

CHAP. XXII.

Of Subscribing a Second or Third Bill.

Rule I.

When the Drawer is not acquainted with the Remitter, or that the Remitter questions his sufficiency, its then usual for the Drawer to make his Bill payable to some Friend of his, who will endorse the Bill, with whose sufficiency the Remitter is satisfied.

I I. But in case the Friend will not willingly endorfe, or the Drawer for some Reasons will not desire it of his Friend, then its usual and customary for that Friend to subscribe the *secunda* or *tertia* Bill.

I II. He that doth subscribe a *secunda* or *tertia* Bill, doth only subscribe his Name under the Drawer's, without adding a Syllable more, and thereby he doth as fully and amply oblige himself as the principal Drawer doth.

I V. No Mackeler or Broger must promise the Remitter, that any other Friends shall subscribe the Drawer's *secunda* or *tertia* Bill, unless he know for certain that it will be so.

V. If in the Contract the Drawer simply negotiate in his own Name, and does not promise that any other should under-write for him, or the Remitter does not expressly condition for it, then the Drawer is not obliged at the request of the Remitter to procure any to subscribe his Bills.

V I. By Subscription of a *secunda* or *tertia* Bill, the Subscriber doth only oblige himself to the Remitter, and to him to whom he gives the *secunda* or *tertia* Bill, by him subscribed;

scribed; thus if the Remitter or any other keep the *tertia* subscribed Bill, and the Possessor of the *prima* and *secunda* unsubscribed would seek any redress upon him, he cannot for want of the *tertia* subscribed Bill.

VII. Because the subscribing of a *secunda* or *tertia* Bill is only for security of the Remitter, and is to the dispect and discredit of the Drawer, therefore not to lessen the Credit of the principal Drawer, the same is usually concealed, not divulged, nor ought the subscribed Bill to be sent away to any other place.

VIII. Because the Bills drawn on *Venice* must be done directly, and made payable by some there, therefore some that give and take, remit and draw on one Exchange time, in one day, make use of this Method, they order their Drawer to make his Bills according to their Direction, the Value from him received, and for their security they subscribe the *secunda* or *tertia* Bill; but a prudent and understanding Drawer will judge himself unobliged to make any Bills, but such as make the Value to be received of the Remitter, to prevent the subscribing of the *secunda* or *tertia* Bill.

IX. The Bills subscribed by another being
satisfied,

fatisfied, should be again delivered to the principal Drawer, who in the *prima* Bill acknowledgeth to have received the Value of him, and the Remitter is very imprudent if he pay the Value to the Subscriber, though he contracted with him, and looks more upon the Subscriber than the principal Drawer.

X. He that subscribes a *secunda* or *tertia* Bill, does wisely if he on the day of Payment enquire of the Possessor or Remitter, whether the Bill be satisfied or no, that he for his security may have the subscribed Bill cancelled or re-delivered.

CHAP. XXIII.

Of Exchanging for Account, and in the Name of a Third Person.

Rule. I.

EXchange is made in the Name and for Account of a third Person when any one doth by the Order, full Power and Authority of another, which is called among Merchants *Procuratio*n; and thus Bills may be drawn, subscribed, endorsed and accepted, not in the Name or for the Account of
him

him that doth draw, subscribe, endorfe and accept, but in the Name and for the Account of him that authorized him.

I I. Great prudence is to be used in giving any man full Power and Authority by Procuration to draw or accept Bills of Exchange; for he that is credited so much, is credited with the Credit and Estate of him that appointed him, his Well-fare is in his Procurators hands.

I I I. A prudent Merchant will be prudent and circumspect in granting any such full Power to any one, and will advise all his Correspondents (on whom his Procurator shall have occasion to draw, &c.) with and under his own Hand, that he hath granted to such and such a one such a full Power to draw in his Name *Bills of Exchange*, and desire them to give credit to his Subscription, till he revoke and evacuate his said full Power, or till such a time as he shall limit.

I V. He that by Procuration in the Name of another, *Bonâ fide*, does negotiate, draw, endorfe, subscribe and accept Bills of Exchange, by under-writing his own Name, and his Quality, does thereby as effectually oblige his Principal (himself being in the mean time not in the least obliged) as if he himself had subscribed.

V. He that negotiates, draws, accepts, endorseth, &c. Bills of Exchange in the Quality of a full Power and Procurator, in the Name of another, is obliged at all times to prove his Quality, and if he cannot do that, nor hath that full Power he pretends to, is not only himself obliged to perform all that he hath negotiated with others in the Name of a third Person, but (if I may add my private Opinion) is liable to be severely punished as a Knave and a Cheat, for pretending to that which he had not.

VI. If any draw or accept by Procuration, and have not that full Power they pretend to, they do not thereby oblige the Person whose Name they make use of, unless it can be proved, that such a Person hath given them such a full Power.

VII. A prudent Remitter will receive no Bills, nor a prudent Possessor accept of no Acceptance that is subscribed by the Wife of the Drawer or Acceptor, or by their Servants or any other, as having full Power, unless he or they produce the full Power, and Instrument, and Procuration, or be every way as able and sufficient as the Drawer or Acceptant himself.

VIII.

VIII. A prudent *Remitter* or *Possessor* of a Bill will look narrowly to this, that the *Procurator* be sufficiently impowered, and that the full Power be not antiquated out of date, or recalled; and in this case it were very necessary and advantagious to all Dealers by Exchange, that every Procurator should cause his Instrument of Procuration to be registred in some publick and known place, that their sufficiency and continuance may the better be known.

IX. He that doth negotiate Bills, &c. as a Procurator, should before he conclude the Parcel, expressly condition that the Bills shall be subscribed by him, as having full Power and Authority from the principal Drawer; and if this be not expressly agreed upon, the Remitter is not obliged to take such Bills, nor to search into the Validity of his full Power, or the like, but may refuse to give him Moneys, or receive his Bills, if he so please.

X. The *Possessor* of a Bill must accept of the Acceptance of a Procurator, if the Instrument of Procuration expressly declare, that all Bills by him accepted are for the account of the Principal, or especially, that such and such Bills as the *Possessor* hath, are for his

his account ; but if the Procuration be not clear nor expresse in this, then he is not obliged to accept of any Acceptance from any that he doth not look upon as sufficient.

X I. He that hath a full Power to draw simple Bills of Exchange in the Name and for the Account of a third Person, hath also Power to draw in and endorfe all Bills of Exchange that are made payable to the order of his Principal.

X II. *Marinus* asserts, That a Merchant's Word or Letter to his Wife, Friend, Servant or other, to accept Bills of Exchange, is not sufficient, without an Instrument and formal full Power, to that end there must be Hand and Seal, and Witnesses to prove it, if need be.

X III. But if there be no such Instrument, if the Wife, Friend or Servant in his absence have formerly usually accepted his Bills, and he, when he hath returned Home, hath approved thereof, and this can be proved, it will come very close to the Matter, and be near upon as good as a legal and formal Instrument.

CHAP. XXIV.

*Of Bills of Exchange drawn on one Place, but Payable in another.**Rule I.*

THe meaning of this Title is thus; When he that is drawn upon (or the Acceptant) dwells not in the same place where the Bill is to be paid, but yet the Acceptant is obliged to bring his Monyes to that place where the Bill is to be paid, thus; Bills are drawn on *Bristol* in *London*, i. e. the Acceptor dwells in *Bristol*, but the Payment must be made in *London*, against which time the Acceptant must have his Moneys ready at *London*. Thus also Exchanges are made on *Ussingen* in *Middlebrough*, on *Enchuyssen* and other Cities of the Province of *Holland*, in *Amsterdam*, on *Brussels* in *Antwerp*, *Lubecke* in *Hambrough*, *Lions*, *Roan*, &c. in *Paris*, *Valentia*, in *Madrid*, &c.

II. The Remitter is not obliged to take Bills drawn upon one that dwells not in the place where the Bill is to be paid, without an Address, especially when the Bills are made

made payable at so many dayes sight, or at Usance (if Usance be reckoned after sight) except this Condition be expressly by him agreed to.

III. The address of a Bill of Exchange, is a direction, made either by the Drawer or the Acceptant, simply declaring by whom, and where the Payment shall be ready, at the time appointed, and to whom the Possessor may address himself in his absence, as if he were present.

IV. He to whom the Bill is addressed by, the Drawer is not obliged to accept the Bill, nor he to whom the Acceptant makes the Address to pay, nor to declare whether he will pay it or no, before the Bill become due, or any way to oblige himself for the Payment thereof: But

V. He that hath the Bill, may demand acceptance of the Person to whom it is address, and in case he hath no Order, no Procuration, nor full Power from the Acceptant, to accept his Bills in his Name, and for his Account, the Possessor may desire the Person, to whom it is address (if a true and trusty Friend and Person) to send the Bill to the Acceptant to procure acceptance, or to return it with Protest, which the Person, on
M whom

whom its address, is obliged to, or else the Possessor may, before the said Person, make his Protest for Non-acceptance.

V I. If the *Possessor* dare not trust the addressed with the Bill, that he may demand acceptance, or if the Drawer hath not address the Bill at all, then its the duty of the *Possessor* to send the Bill, or cause it to be sent, to some that lives at the place where the Acceptor dwells, to demand acceptance, or upon refusal to Protest.

V II. Its also usual, when the *Remitter* or *Possessor* have no Correspondent to send the Bill to, that lives at the place where the Acceptor dwells, to desire the Drawer to send the *Prima* Bill to the Acceptant, to procure acceptance, and to return it accepted to the *Remitter* or *Possessor*, to which the Drawer is not obliged, yet cannot well refuse, if he be assured of the real Honesty of his Correspondent, and that he will accept his Bill.

V III. In case the Drawer do not in a convenient time, return the Bill accepted to the Remitter, as above, the Drawer is not obliged in such a case, to give any further satisfaction to the Remitter, but the Remitter must look to it himself, and send the second a Bill to some other, to procure acceptance, and to enquire

enquire whether the *Prima* be accepted or no, and if not, then the Acceptant must accept the *Secunda*, or a Protest must be entered against him.

I X. But a prudent and circumspect Remitter will not leave *Prima* Bill in the Drawers hands to procure acceptance, unless he be sufficiently assured of his Honesty and Ability.

X. When the Possessor of such a Bill hath no Correspondence at the place where the Acceptant lives, nor any who will take upon them the trouble to send it, nor dare the Remitter trust the Drawer with it; or if the Bill be payable in a place where there is no Bank; or if the Bill must be paid in current Moneys *per cassa*, and not in Bank, then its usual for the Possessor to advise the Acceptant by Letter, that he hath such and such a Bill on him, and desire him to return Answer, whether he accept the same to pay it at the time or no; but if he get no Answer at all, or for answer, that he will not accept it, nor pay it, then the Possessor is obliged, to carry or send the Bill to that place, and there formally by a Notary Publick demand acceptance, and in case of refusal to protest.

XI. If the Acceptant be an Out-dweller,

(i. e. dwells in another place than where the Bill must be paid) then when acceptance is demanded, usually the Possessor desires him to under - write to whom he must at the time address himself for Payment. But the Acceptant is not obliged to do this; but on the contrary, the Possessor is obliged to give the Acceptant timely notice to whom the Bill must be paid, if it be a Bill that is payable to order.

XII. When a Bill is made payable after sight, or at usance (and usance be reckoned after sight) by an Out-dweller, then the Acceptant may date his Acceptance on the day it was demanded of him, if Acceptance be demanded directly from the place where the Bill was drawn; but if the Bill be first sent to the place where the payment must be made, then the Acceptance ought to be dated the day of the arrival of the Bill at that place, and not on the day of its being presented to the Acceptant in the place where he lives, if the Possessor will stand strictly and precisely for a day with the Acceptant, otherwise its no loss or prejudice to the Possessor when the Acceptance be dated, if within the just time.

XIII. An Out-dweller must take special care that the Bill be discharged at the day in its due place, and must not wait till the Possessor advise him thereof.

XIV.

XIV. When a Bill is payable by an Out-dweller to order, and not to a certain Person, and the Acceptant hath not ordered to whom the last assigned shall address himself at the day of payment, then the Possessor (whoever he be) is obliged to give the Acceptant timely notice to whom the Bill must be paid, that the Acceptant may within the Respit dayes return an answer, and make all due and necessary preparation to discharge the same.

XV. If the Out-dweller at the time appointed remit to the Possessor of his accepted Bill, in other Bills due at the same time with the Possessor's Bills, the Possessor is not obliged to demand Acceptance and Payment of those Bills of his Acceptant, the Out-dweller, unless he hath Provision allowed him, because he hath double Trouble in procuring his Moneys, and is obliged to keep a Correspondence, and many other inconveniences may follow; but when the Acceptant doth simply address the Possessor to some certain Person, to demand payment of him for the Bill, to him he is obliged to go to receive his payment, without any Provision.

XVI. When an Out-dweller hath a Bill remitted to him, payable by an In-dweller,

and the Out-dweller desires his Acceptant at the day to send him his Moneys in Specie, or to remit him the value in other Bills, the Indweller is not obliged to do this without allowance of Provision, &c.

XVII. The *Possessor* of a Bill payable by an Out-dweller, must at the last day of Respit (if he get no payment) order a *Notarius Publicus* to enter a Protest for Non-payment, which Protest, though not made in presence of the Person, nor at the House of the Acceptant, is valid, and effectual to all intents and purposes, because the Possessor of the Bill is not obliged to protest against an Out-dweller at his House or Dwelling, nor to seek him out of the City or Town where the payment is to be made.

The Out-dwellers of *Amsterdam* have made use of this Policy, to make the foregoing *Rule* and *Protest* ineffectual on the day of Payment, pretending Ignorance of the Person to whom the payment is to be made; they at the place where the payment is to be made address themselves to a Notary Publick on the last respit day, and there declare to him, That such and such a Bill payable to order, by them accepted, is now become due, whereof none have demanded payment, they therefore protest for their readiness and willingness to discharge the said Bill, and accordingly

accordingly they cause a formal Protest to be drawn up, and send the same to the Drawer, to make use of the same against any other Protest for Non-payment; but this slight and cunning might be prevented if one general *Office of Protests* were erected, where all Protests should be Registered, and so every one might see to whom they are to apply themselves.

XVIII. *Marius* adds, That in case an Out-dweller refuse Acceptance when the Bill is sent to him, Protest may either be made at the House of the Out-dweller, by the Person who was ordered to demand Acceptance, or else at the place of Payment, the Friends Letter that demanded Acceptance being produced to the Notary is sufficient to ground the Protest upon, and so also in case of Non-payment.

XIX. Though the Possessor be not obliged to seek for payment of an Out-dweller in any place than where the Bill is payable, and the Drawer or Acceptant hath address it, yet he may, in case of Non-payment *Executive proceede* against the Acceptant in any place where he either finds his Goods or his Person. *Sigism. Scaccia.*

XX. *Scaccia.* The Debtor by Exchange is
M 4 obliged

obliged to bring his payment to the place of payment, though it be both chargeable and dangerous, and the *Risco* and Expences are his own, and if the Debtor request the Creditor to take his payment in any other place, and the Creditor consent, the *Risco* and the Charges must be paid and allowed by the Debtor, as they can agree; but if the Creditor receive his payment simply, then he takes the Hazard and Charges upon himself.

• **XXI.** So also the Creditor by Exchange is obliged to come to receive his Moneys at the place appointed, though it be both expensive and hazardous to carry the Moneys Home, or to any other place where he would have it, but yet the Creditor can and may seek his Debtor in any place where he will, and there receive his payment, but then he cannot compel the Drawer to bear the Charges thereof, nor the *Risco*. *Scaccia.*

CHAP.

CHAP. XXV.

Of Exchanges in Commission, in General, and of Bills drawn on one Place over another Place.

Rule I.

EXchange to a place, over a place (or thorow a place) is, when Bills are not made payable, or remitted to the place or City directly where the Moneys are, or where the Remitter would have his Moneys, but on some other place, from whence the Value is to be re-drawn or re-remitted, to the place where the Money is to be paid, or where the Remitter would have his Moneys.

Exempli gratia:

A Drawer hath Moneys lying at London, and would gladly have it at Dantzick; the Drawer at Dantzick cannot directly draw his Moneys in from London, but first he draws on Hambrough or Amsterdamb, and then orders his Friend at Hambrough or Amsterdamb to draw upon London.

II. The Reason of this kind of Exchange is either, *First*, Because directly there is no Course

Course of Exchange, or no Rescount; Or, *Secondly*, Because it may be more advantageous and profitable thus to negotiate Exchanges, than directly.

III. *Bills* of this nature must be made first payable at the place, over or thorow which we draw, and to a Person dwelling in the place whereto the Remitter remits, whether he be Factor, Servant, or any else.

IV. A *Factor* is one that serves another in Commission, that observes his Principal's order, and acts according to his direction, for which he receiveth Provision.

V. Provision is the Reward the Factor receives from his Principal, placing it to his account, for his trouble in corresponding and negotiating his Principal's Affairs, and in Bills of Exchange, hazarding his Credit.

VI. Bills are negotiated for another when the Factor negotiates Bills in his own Name for the account of another; and by another, when the Bills are negotiated in the Principal's Name by another in Commission.

VII. Circumspection and Prudence is very requisit both in him that employes, and in him that serves others in Commission; and

a Merchants principal care in Exchanges (of this Nature especially) is to see that he hath a sufficient and able person to correspond with, whether he draw and charge his Bills upon him, or remit his Bills to him; and he must not only have respect to his Ability, but to his Fidelity also; for an Able, but Knavish Correspondent may serve his own Ends with the Moneys his Principal hath provided for him to discharge his Bills with, and suffer his Bills to return with protest (as *Shaw* and *Snawdon*, two *English* Factors at *Hambrough* lately did.) But,

VIII. A Factor that hath a Cordial, Real and Able Principal, who doth not use to abridge him of his Provision, is obliged to improve all his Abilities and Faculties in the true and faithful Service to him, and should seek his Interest and Advantage as his own, (which the above-named Kn—— never did) but if the Principal will not allow the usual Provision, nor Postidge of Letters, nor Courtage, &c. doth force his Factor one way or other, in the broad or the long, to make up his Disbursements, that he be no looser.

IX. Factors are obliged to a due Correspondence, and by the first Post to give an account what they have negotiated in their *Principal's* Affairs, with all the Circumstances thereof,

thereof, *viz.* the Sum, the Course, what Conditions, and with whom.

X. A prudent Principal will require of his Factor, though he hath credited him for the Bills negotiated, all the Circumstances thereof, and the Factor is obliged to advise thereof; and in case he hath bought Goods, not only to declare who is his Chapman, but also in case he hath remitted Moneys for his Principal's account, whereof he hath not yet received the Bills, to give an account who is his Drawer; and so, if he hath drawn, who is his Remitter, &c.

XI. The Principal is obliged, as soon as he receives advice of any Negotiation done for his account by his Factor, to approve or disprove of the same. But,

XII. The Principal is not obliged to approve of all that his Factor doth; but if the Factor hath exceeded, or not followed his Orders punctually, though what he hath done were never so prudently managed, and with a good Intent, and in design for the most Advantage and Interest of the Principal, yet he may disprove of the same, and if he can make any Damage appear, he may make him allow of it. But again, on the contrary, if the Factor hath followed Order, and hath
not

not transgressed nor exceeded his Commission, then the Principal must approve of what is done by his Factor, though it turn not to account, but be greatly to his loss.

XIII. The loss that is by Exchange (or any other concerns) if the Factor hath followed Orders strictly and punctually, must be born by the Principal, for whose account the Negotiation is. And,

XIV. Such a Factor that follows Orders, does not amiss, though he fore-see, if he should delay, or follow his own Conceptions, it would be more profitable for his Principal; and because Exchanges are as variable as the Wind, and many times as if made, do precipitate without any known Cause or Reason; therefore a Factor must not exercise his Speculative Philosophical Faculty and Reason what is profitable or not for his Principal, but must follow Orders precisely, if he possibly can, unless he certainly and absolutely know, that it will be very prejudicial to his Principal so to do.

XV. So then, Orders must strictly, promptly and punctually be observed; for if a Factor act without, contrary to, or above Order, and his Principal approve not thereof, the Negotiation, whatever it was, remains

remains done as for the Factor's account, and he must bear the loss thereof. Yet,

XVI. That known Rule; *Volge Order, & dort Qualick* (i. e. follow Order, though to the Principal's loss) is not alwayes to be observed, if the Factor see that by following Order he shall infallibly prejudice his Principal; for else he deals not honestly with his Principal, nor as for himself, but makes it plainly appear, that if he get his Provisions he cares not whether his Principal sink or swim, and its therefore best of all in such cases, for the Factor not to perform the Commission, but wait for second Orders if he can. For,

XVII. A Principal hath not alwayes regress against the Factor, for the loss that doth ensue upon the not performing the Commission, although the Factor hath promised to effect his Orders, and could have done it. But,

XVIII. If he act any thing contrary to Order, he is alwayes obliged to make satisfaction for the Damage and Interest, &c. *Sigism. Scaccia. pag. 391.*

XIX. If a Factor exceed his Order, its not in the power of the Principal to take so much of the Negotiation for his account as his

his Orders were, and regulate the Affairs accordingly, but he must either totally approve or disprove of what the Factor hath done, and so either take all or none, as its done by the Factor.

XX. If a Factor transgresss his Limits and Orders, and give advice thereof to his Principal, and does consent, that in case he disprove of what he hath done, the whole Affair and Negotiation shall be reduced to his Orders, the Principal must content himself therewith, and be silent.

XXI. The Factor that can and will not act to his Principal's advantage, cannot have a quiet and peaceable Conscience; neither if he can negotiate his Affairs under or above the course and limits that he hath given (and so more to his advantage) can he detain the advantage for himself.

XXII. A Factor renders himself suspected if he do not advise his Principal of the true Course, but makes his Bills in a Forreign Denomination of Moneys. As for Instance: At *Amsterdam* the custom is to exchange on *Dantzick* in *Pounds Flemish*, at 216 *Groshe Polish Money*, or else for a *pound Flemish*: Now if the Bills made at *Amsterdam* be made in *Polish Guilders* and *Groshe*, and not in *Pounds Flemish*,
it

it presently reflects suspicion upon the Factor, as if he had clipt the Course.

XXIII. If one Factor hath one and the same Commission from divers Principals, (whether in Exchange or other Affairs) without any Limitation, and he doth effectually perform the said Commissions, but perhaps in different Courses, or at several Prices, that he cannot possibly reduce them to an equality, then its not contrary to Reason that he let that Principal, which to him is (or may prove) the best, have the most advantage; but yet he is obliged so to manage the Affairs that one Principal shall not have all the most advantagious, and the other all the most disadvantageous Courses and Prices; but he must endeavour to give all satisfaction and content as far as he can, that he may with confidence answer them all.

XXIV. If a Factor hath Orders to one and the same purpose, from divers Principals; but one limits him to a Course and Price, the other not; if he can, and doth effect both their Commissions at the limited Price and Course, or yet more for their advantage, then its but Just that the Principal that gave not limits should be preferred, if there be any advantage; because if the Commission could not have been effected at the limited

limited Course and Price, he must have been content to have stood to and suffered the loss.

XXV. If a Factor hath a double Commission from one Principal about drawing and remitting, he must not effect the one, unless he know how to effect the other (or if to buy and draw, he must not first draw and then buy) if he do the one without the other, its but an half effected Commission, and will remain for the Factors Account, and he must bear the loss.

XXVI. The Factor may, and must place his Principal to account Courtage and Mackeleridge, though the Commission was effected without the Interposition of either Mackeler or Broger: But that Factor that to spare the Courtage or Mackeleridge, and place it to his Principals Account, over and above his Provision, will rather yield to some things in the Conditions of the Negotiation (as to give more, or take less) does not honestly and truly serve his Principal as he ought.

XXVII. For Courtage of Exchanges, whether in drawing or remitting, usually one *per mille* is allowed for Provisions for drawing and remitting, each half *per cent*;

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but for accepting and drawing both, but half per cent.

XXVIII. A Factor that is a Creditor of the *Principal*, cannot detain that Moneys that the *Principal* hath remitted to him, with orders to remit again, or otherwise dispose thereof for his Credit, and afterwards effect his Order, value again upon him, or buy upon Credit. *Sigism. Scaccia. pag. 388.*

XXIX. If one Partner order another to draw upon him, or upon any other, its alwayes supposed he may do it either in his own Name alone, or in the Name of the Partnership. *Scaccia.*

XXX. If a *Principal* order his Factor to pay his Bills of Exchange, and place them to account of a third Person, it supposeth that the third Person is the Drawers Debtor, and if the Factor do accept of the Commission simply, it doth infer an Assignment upon the third, or at least *Cessionem Nominis*, of whom the Factor must seek his Reimbursement. *Sigism. Scaccia. fol. 387, and 480.*

XXXI. If a Factor hath order to pay Bills of Exchange, and to place them to the Drawer's Account; or if he pay *supra Pro-*
rest

test for the Drawers Account, if the Drawer will not Re-imburse him, he may by Attachments and Arrests proceed against the Drawer. *Scaccia.*

XXXII. The act of a *quasi* Factor cannot prejudice the *Principal*, unless there can be produced the *Principals* Order. *Scaccia.*

XXXIII. No more then half *per cent.* is due for the Provision, both for the Labour and the *Risco*, if the Factor stand *del credere*. The *Italians* allow but one third for both; more than this usually and customary Provision no Factor can with a good Conscience take or demand; unless it be agreed upon expressly; and being the *Risco* cannot be weighed by Ounces and Pounds, and the most hazard may be when the least appears, and *contra*, and that he is a Fool that will for so little Provision run an eminent hazard, therefore its ill to talk of Provision for the *Risco*. *Scaccia.*

CHAP. XXVI.

Of Drawing in Commission.

Rule I.

D*rawing in Commission* is either for the account of him on whom is drawn, who is the Acceptant, or for a third Person.

I. When a Bill is drawn for the account of him on whom its drawn, prompt and punctual advice must be given him, *What Sum* (and distinctly in how many Bills) *what Date, to Whom and When Payable, from Whom the Value, at What Course, and How much he will therefore be credited in the Account.*

III. Bills must not be drawn for the account of a third, without special order from the Person for whose account it is, and the Acceptant should also advise that he is ordered, and will accept for the account of that third Person, before the Drawer ought to draw.

IV. When Bills are drawn for the account of a third, punctual advice by the Drawer to the Person for whose account, and also to the Acceptor must be given. V.

V. The Acceptor must be advised, first, *For whose Account, and then what Sum, in how many Bills, what Date, to whom, and when Payable, and from whom the Value.* But to add the Course, is not necessary, unless the Exchange be made in a Forreign or Imaginary denomination of Moneys, wherein the Merchants of that place where the Bill is payable do not keep their Accounts, and when the value of the Bill must be paid, according to the course contracted for; As for instance, Exchanges are drawn at *Amsterdam* on *Dantzick, Konigsbrough, Stockholme, &c.* in the *Pound Flemish*, at so many *Grosh* for the *Pound Flemish*.

VI. The Principal for whose Account is drawn, must be advised of the Course, *On Whom is drawn, What Sum, at What Time Payable, and the Value that he is Credited for:* But to advise him how many Bills, or with whom is Negotiated, is not necessary at all.

VII. In the making of Bills drawn for the account of a third, some Drawers observe this Method, in the concluding of the Bill they say, *Make good Payment, and place it to Account of N.N.* naming the Person, or the two first Letters of his Name and Sir-Name, to prevent and obviate an Ex-
N 3 ception

ception that the Acceptor may make that he accepted not for such an account, nor does satisfy the said Bills for such and such an Account, but on the Drawers Account.

VIII. Bills are, and may sometimes be drawn upon another for a third Persons account, and yet the Acceptor not know the Person at all; but such draughts are alwayes made upon the Obligation and Faithfulness of the Drawer.

As for Example.

A. B. is straitned for Moneys, and *C. D.* his Friend can spare him none; but he hath Credit with *E. F.* of *Amsterdam*, and he will serve his Friend with his Credit; but *A. B.* and *E. F.* are utter Strangers one to another, wherefore *C. D.* will value on his Friend *E. F.* such a sum of Moneys for the account of *A. B.* as he hath occasion for, whereof he adviseth *E. F.* and assures him that he will be caution for the punctual Re-imbursement. This method of Exchange is also practised, in case *A. B.* is Debtor to *C. D.* and *A. B.* cannot conveniently pay the Moneys, whereupon they both agree that *C. D.* may value on his own Correspondent, *E. F.* with order to redraw the same on *A. B.* the Debtor.

IX. Sometimes Bills are drawn for the account of a third, by the order of a fourth.

As for Example.

A. B. of Antwerp hath order from *C. D. of Madrid*, to draw for his Account on *E. F. of Hambrough*, but *A. B. of Antwerp* finding no Rescouter, orders *G. H. of Amsterdam* to value the said Moneys on *Hambrough* for the account of *Madrid*, by the order of *Antwerp*, which done, he shall remit the Moneys to *Antwerp*; or else *A.* draws on *B.* with order to reimburse himself, by drawing on *C.* for the account of *D.* but such a Commission *B.* should not accept of, unless *A.* oblige himself; and when he draws on *C.* he must advise him, that he draws by the order of *A.* for the account of *D.* and also give advice to *A.* and the account also; but its not necessary, though this Negotiation be for the account of *D.* that *B.* should correspond with *D.* about it, to which *A.* is obliged.

X. When a Drawer in Commission gives his Bills to any that do not punctually pay the Value, he is then obliged to procure the Value by rigour, and arresting his Goods and Person, and may not give him any time or delay, but upon his own *risco* and hazard; no, not a day longer than till the next Post.

X I. If a Drawer in Commission give the Remitter any time for the payment of the Value, and hath thereby any advantage in the course, and placeth the advance to the Principals account; then the Principal upon advice thereof is obliged by the next return of the Post to approve or disprove thereof, and if he be not satisfied with the conditions, he must let the Drawer have the advantage, and answer his Principal according to the price current.

X II. A Factor that hath order to draw upon a third at sight, does not wisely if he draw at any time.

X III. Above all he should observe, not to draw after sight, but alwayes after date, or at a certain and fixed day.

X I V. If a Factor hath order to draw on a third at price current, he must follow his Order, though it be to the disadvantage of his Principal.

X V. A Principal must be content with the course his Factor hath concluded on, though it be to his great disadvantage, whether it proceed from the course of Exchange, or from the Factors little credit.

XVI.

XVI. Sometimes it falls out, that a Drawer having drawn in a disadvantageous course to the Principal, does for certain Reasons advise his Principal of a better course than he got, whereby he loseth sometimes more, sometimes less than all his Provisions; and as this is lawful, so also it cannot be judged Knavery if the Drawer hath got a very high course, if he place his Principal the price currant to account, thereby to make good his loss; but more not.

NB, As this may seem disputeable, so also doubtless its still the best way to give the Principal an account of the Remgeltam, and not otherwise. For,

XVII. Such a Factor renders himself suspected by his Principal, for whose account he draws, if he do not advise him the true and right course wherein he negotiated, as also when he makes the Bills in another denomination of Moneys than is usual and customary; for by so doing he can reckon the course afterwards as he pleaseth.

XVIII. Its very advisable for Drawers in Commission, that they procure the Acceptance of their Draught (especially when on a third Person, and not on the Principal directly) without delay.

XIX.

XIX. When a Factor hath order to buy Goods, and to draw the Costs and Charges (or part thereof) on a third Person, and he knows not, or doth not much confide in his Principal, then its usual and customary for the Factor to correspond with him on whom he hath order to draw, and know whether he will accept such & such Bills for that Principals account, or not; and if he advise that he will accept, he is not obliged to accept when the Bills come, *Nisi rebus sic stantibus*, or that he hath effects in hands.

XX. He that hath order to draw on one place, and remit to another for the account of a third, or to remit to one place, and draw on another the said value for the account of a third, he must not remit before he know that he can draw, nor draw before he know that he can remit, lest on the one hand he be in disburse, on the other, in cash for his Principal, not knowing how to dispose of it, which cannot but displease him; and when he hath an opportunity to do both, he must before he conclude make his calculation, whether he can with the course answer the designs and limits of his Friend (if he be limited.)

XXI. When a Factor hath order to draw

A just and limited Sum, then he must add to the Sum (if it be to conclude an account, &c.) Provision, Courtage, Postage and other Charges.

XXII. In case (according to *Case 19.*) the Acceptant in Commission advise the Drawer in Commission, that he will accept such and such a Sum for their Principals account, and afterwards the Acceptant, on the presenting of the Bills for acceptance, utterly refuseth; if the Drawer hath bought and ship't Goods, there is no reason but the Acceptant should be compelled thereto, because the Drawer had not bought Goods (or remitted, &c.) but upon the advice of the Acceptant; and so he, the Acceptant was the occasion of the loss. *Scaccia.*

XXIII. But if the Drawer hath not shipped the Goods, nor is in any danger of losing upon that account, then he can demand no more of the Acceptant than Rechange and Charges (seeing he gave the occasion to the loss) and reparation of his credit, being he suffers by having his Bill protested. *Scaccia.*

XXIV. If a Principal order a Factor to draw, and he having disbursed Moneys for his Principal, doth draw, the Principal may be compelled to accept his Bills, and pay them.

CHAP. XXVII.

*Of Remitting in Commission, and
standing Del Credere, i. e. being
Surety therefore.*

Rule I.

HE that remits in Commission, does either remit for the account of him to whom he remits, or for a third Person, and he either stands *del Credere*, or not for the Remises.

II. Remitters in Commission must take special care, that they order the Bills to be made payable to whom the Principal gives order; & if he let the Bills be made payable to his own order, he must not forget to endorfe them to his Principals order, before he send them away.

III. If a Remitter in Commission hath ordered the Bills to be made payable either directly to the Principal, or to his order, or any other, &c. may (if he think fit) if he hath not sent the Bills away, or parted with them

them out of his hands, cause them to be altered, and make them payable to any other.

IV. When a Remitter in Commission hath sent his Bill to a third Person, by the order of his Principal, and in his Letter of advice hath clearly exprest for whose account it is; then neither he nor his Principal can alter or recal the same, to the prejudice of him to whom the Remises are made.

In giving of advice, the Remitter must observe what before was noted in the preceeding Chapter.

V. A Remitter in Commission, when he remits to one, who lives not in the place where Payment must be made, should send the *prima* Bill directly to the place of Payment, where Acceptance must be demanded, and by Refusal thereof protested; and thus he also may have speedy advice himself, to secure himself of the Drawer, from whom he may demand three Bills, and send the two other to his Principal.

VI. When a Bill is thus protested for Non-payment, and returned to the Remitter, and he procures satisfaction, with the Rechange, Charges and Provisions, then the Remitter need not place any more to his Principals Account on the credit, than what
for

for Disbursements it was made Debt; and as for the Provision, that is due to the Factor, for procuring of Satisfaction.

VII. Though a Remitter in Commission stands *del Credere* for the Remises, yet he doth very unwisely to order the Bills to be made payable to himself or order, and then endorse them; however, this is frequently practised by the chiefest Bankers and Exchangers, on purpose to conceal from the Drawee to whom they remit; but this is very imprudently done, for these Reasons:

1. The endorsing may be forgotten or neglected, and thence may follow endless Disputes and Contests, and great Damage.

2. The Remitter by that means makes himself lyable not only to answer all damages, &c. to the Principal, but also to every Possessor and Endorser of the Bill after him; For,

3. By endorsing the Bill he makes it his own Bill, and obligeth himself on the account of his Principal, not only for the Value by him received, but for all other Charges and Re-changes.

VIII. When a Remitter in Commission does not stand *del Credere* for the Remises, then he doth very imprudently to order the Bills to be made payable to himself or order, and

and then endorse the same; for thereby he stands effectually *del Credere*, and hath no advantage by it.

IX. A Remitter in commission that stands *del Credere*, may upon the returning of a Bill for Non-acceptance, contracting with the Drawer for the Re-change and Charges, and receiving satisfaction, if he hath not endorsed the Bill, not only be compelled and required to remit the same Value to the same place, to fall due at the same time, or to give order for the payment of the Sum at the same time, but he is also obliged to give his Principal the advance of the Re-change, &c. But in case he hath endorsed the Bill, he may absolutely refuse to give him the advance of the Re-change, and the Principal must be satisfied and content with it, because by his Endorsement he made it his own Bill, and he (as well as any other Drawer or Endorser) may cause the Bill to be satisfied at the time appointed, and take the advantage of the Re-change to himself.

X. A Remitter in Commission, that stands *del Credere*, is not obliged, in case a Bill be returned with protest, and the Drawer is not able to make satisfaction, to make good to his Principal any more than the Value he paid for the Bill; the Re-change & Charges,
if

if lost, are lost to the Principal, because the Remitter had Provision for no greater Sum than the Value he paid; but if he get satisfaction for the Re-change and Charges from the Drawer, then he is obliged to make the same good to his Principal; but the Provisions that he receives from the Drawer he may detain for himself, and is no way obliged to credit his Principals account for them, unless the just Sum with the Provision and Charges be effectually re-drawn on him, but then he may also place his Principal Provision to account for his accepting and paying the said Bill,

XI. A Remitter in Commission with *del Credere*, is at the returning of a Bill with protest for Non-payment, obliged presently, and without delay to make good the said Value, or to suffer it to be drawn on him, because he standing *del Credere*, does oblige himself not only for the sufficiency of the Drawer, but also for punctual payment; but then the Interest, Rechange, &c. is all for the profit and advantage of the Remitter himself, if the Drawer cannot make present punctual payment and satisfaction, though he afterwards will, and gives security therefore out of his effects, or otherwise.

XII. A Remitter in Commission with *del Credere*,

Credere, giving order for the payment of a Bill protested for Non-payment, may charge his Principal with what he pays effectually more than the Bill was for, or what he disburies more than the value was that he paid, on condition he let the Principal have leave to recover what loss he may have, and the charges from the Drawer.

XIII. A Remitter in Commission with *del Credere*, making the Bills payable to the order of his Principal, or to a third, is obliged (though the said Bill be drawn and endorsed several times in several places, and that therefore the advice of the Bills being protested cannot come in a long time after protest is made to his hands) to answer to his Principal the value by him paid, and that though the Drawer was for some considerable time in credit after the advice thereof might have come to his hands, if it had been sent directly.

XIV. If any remit in Commission with *del Credere*, in his own Bills, then is he, because he is also Drawer, at the returning of his Bills with protest for Non-payment obliged to make good to his Principal the Rechange and Charges, as if he had not been the Drawer himself, but a Stranger —

XV. When any remits in Commission
O with

with *del Credere*, and makes the Bills for the account of him to whom he remits, then the *Risk of standing del credere* is ended with the day of Payment; so that in case the Acceptant (suppose he were also the Person to whom the Remise was made) should fail the very next day after the Bills became due (or within the usual appointed respite dayes a formal protest for Non-payment be not entred) the loss is the Principals, and not the Remitter in Commission; but if the Acceptant fail before the day of payment, or does protest against himself for Non-payment within the dayes of Respite, then the loss is the Remitter, because he also is the Drawer of him for whose account the Draught was made.

XVI. When a Remitter in commission hath order from his *principal* to remit to some other place (to some of his Correspondents, that he looks on as sufficient) a certain Sum of Moneys with his *del Credere*, there to wait the Principals order; if the said Remitter advise his Principal of the Remises, and to whom he remitted, and the said Sums he duely and truly paid, then the Remitter (if the remitted beyond all fear should fail) is not obliged to the Principal, because the *del Credere* hath only respect to the remitting of such Sums in sufficient Bills, and not to him to whom they are

are remitted, by whom the said Sums from the moment of their being paid to him were at the order and disposal of the Principal, and he having no occasion instantly to dispose of them, he did trust and credit the same in the hands of his Correspondent.

XVII. A Factor having order to draw on one place, and to remit to another the said value, or any part thereof, with his *del Credere*, if it should so happen that he could procure no satisfaction of the value for his Draughts, he must suffer the loss, because the *del Credere* in such a case hath respect to the whole Negotiation, and not to the Remises only.

XVIII. A Factor for an Out-dweller for the sale of Goods, standing *del Credere* for the Debts, does not stand *del Credere* for the Remises that he makes to his Principal, issuing out of the Debts he hath received, unless there be a special and particular contract concerning it.

XIX. A Remitter in Commission must not remit by anticipation in Rescounter of the advance that is yet for the account of his Principal not come in (or not received) but if he do, he must expressly advise him, that the Remises are by anticipation, without his

his prejudice, though the Moneys to ballance this particular in his account be not yet come in.

XX. And as a Drawer, so also a Remitter in Commission, with or without *del Credere*, makes himself suspected if he advise not his Principal of the true course of his Negotiation, as also when he makes his Bills (or orders them to be made) or accepts of unendorsed Bills, wherein the Sum that is exchanged is exprest in a Forreign denomination of Coyn, and not in that Coyn wherein the Bills of Exchange usually and ordinarily are made.

XXI. Because a Remitter in Commission is not obliged to remit, if he can meet with no Bills within the limits of his Commission, and is no wayes obliged to supply what is awanting; so also on the contrary, he is not allowed when the course of Exchange is under the limits of his order, to charge his Principals account with a course that he li-mitted; but if he with his *del Credere* credit any that have not gained sufficient credit, or hath lost part of it, or that is not well known, and can contract with such a one under the course (not under the limits) he may then, taking the hazard of the Bill upon himself, charge his Principals account, according to the
course

course of Exchange in the best Bills at that time : But if he stand not *de Credere*, and his Principal shall run the hazard of the Bill, then he doth him wrong if he do not let him have the advantage of the course.

XXII. When any hath a remitted Sum, or any other Effects to remit again, in a just and warrantable appointed sum, and would reckon the Provision thereof, he is not allowed to reckon Provision of the full advance, that his Principal hath by him, but only of the sum, he is ordered to remit; for otherwise he will have Provision of his Provision.

As for Example.

When any Factor hath 1000 Pound *Flemish* to remit with his *del credere*, then usually $\frac{1}{2}$ per Cent. Provision is reckoned, which makes 40 *Guilders*, and one per Mille Courtage is 6 *Guilders*, and 5954 *Guilders* remitted, is in all 6000 *Guilders*.

But in regard the Courtage of the sum Remitted is only *Guilders* 5. 19 Gr. at one per Mille, so also the Provision is no more then *Ggl.* 39. 14 which maketogether *Ggl.* 45. 13. so that there is 7 Gr. or Sr. difference, that the Factor reckons too much in his own Favour.

XXIII. If the Bills of a Remitter, upon his own *del credere*, be returned with Protest and he can procure no satisfaction presently of the Drawer, though he get Security, yet if he be forced to disburse his own, or borrow Monyes of another at Interest, he may place the same to the Drawers account, and make him allow the same. *Scaccia.*

XXIV. He that remits in Commission, and is negligent and careless, dealing with those that are suspected to be Insolvent, or near Tailing, must bear the loss and run the hazard, as if he effectually stood *del credere*. *Sigism. Scaccia. fol. 411. and 391. Num. 400. & sequentibus.*

XXV. He that makes a Remise for the Possessors account, cannot revoke his Order, with the consent of the Drawer, nor forbid the Payment, but if for his own account, he may. *Scaccia.*

CHAP. XXVIII.

*Of being drawn upon in Commission.**Rule I.*

I T is the duty of him that is drawn on in Commission, upon the advice of the Draught punctually and without delay to return answer to the Drawer, and to advise him, whether he accept or no, on the Conditions, and for the Account of him for whom it was drawn.

I II. And if the Draught be for the account of a third, then the Acceptant must give advice to him also, for whose Account it is, that such a Sum by such a Person is drawn on him, for his Account, and is payable at such a Day, so also that he shall accept the value for the Principal upon it or not.

I III. He that is drawn upon for the account of a third Person, from whom he hath no order to accept, neither is in Cash for his account, neither hath order to redraw the value on the Principal from the Principal, does wisely if he suffer the Bills to return protested for Non-acceptance, unless he know the

the Drawer very well to be sufficient and honest, and will accept for his account *supra Protest*.

IV. If any be drawn on for the account of third, whom he will not credit, or from whom he hath no orders to accept any such Draughts for his account, he can and may if the Drawer be sufficient, accept the Bills *supra Protest* in honour of the Drawer; but in such a case he is oblig'd instantly to advise the Drawer of such his acceptance *supra Protest*.

V. He that is drawn on, either for the account of a third, or for the Drawers account, making a difficulty either freely or *supra Protest* to accept for the one or the others account, may accept the same in honour of any one Endorser *supra protest*, if he know & dare trust any one of them, and then he is obliged to give the Drawer, and the Person for whose account it is, and also the Endorser for whose account he accepts, advice thereof, and to send the Protest and the Acceptance *supra Protest* in honour of any Endorser to the said Endorser, for his use against his Drawer.

VI. When the Acceptant hath accepted a Bill *supra Protest* in honour of the Drawer or any Endorser for want of advice or order, or
Provision

Provision from him for whose account the Bill is drawn, and he shall afterwards receive Orders and Provision, then he is obliged to free the Drawer and Endorser from their Obligations, and to advise them that he will pay the Draught for his account for whose it was drawn, and that he therefore dischargeth them.

VII. When an Acceptant accepts a Bill with the Drawers Obligation, then he is obliged at the day of payment to advise the Drawer, whether he for whose account the Bill was drawn did make Provision for it, or other wayes give sufficient order for paying the same, and that he therefore dischargeth him from his Obligation.

VIII. When any is drawn on for the account of a third by one with whom the Acceptant never had any Correspondency, and therefore knows not his Hand-writing, then must great prudence be used, though the Acceptant hath order from the Principal to accept the same, and must in no wise accept of any such Bill without a Letter of advice from the Drawer himself, that the Hand-writing in the Bill and Letter may be compared.

IX. He that verbally or by Letter hath promised to accept of any Bills drawn on him
for

for the account of a third, he to whom this promise was made relying thereon, gives the third Person credit, then he that made the promise is obliged to perform it, in respect of him to whom he made the promise; but if he afterwards refuse to accept his Bill for the account of the said third Person, the Possessor of the Bill cannot force him thereto by present execution, but only in the ordinary legal way.

X. No Acceptant can or must accept for his Principal Bills drawn by another for his account, unless he hath express order so to do, and the Drawer doth in every respect fully and punctually observe his order, if the third Person, for whose account was drawn, advise the Acceptant thereof.

XI. When a Factor hath order from his Principal to accept a certain Sum from a third, for his account at usance, and the third draws at sight because he could not meet with any opportunity according to his Principals order to draw at usance; in such a case the Acceptant may accept the Draught in honour of the Drawer *supra* Protest, and re-value the same upon him, if he hath no order from the Principal how he may be re-im-bursed.

XII. When a Factor hath order from his Principal to accept of any Draughts at usance from a third, and the third finds no opportunity to draw the same till half usance be expired, and then draws at half usance, in such a case the Acceptant is obliged to accept freely and willingly.

XIII. If any be drawn on in Commission, and is ordered to draw the value again from some place else, whence he probably can meet with no Moneys, or cannot draw in the limited course, and finds it is not his conveniency to disburse so much Moneys for his Principals account, then he may, if he cannot do otherwise, charge his Bills directly on the Drawer, or any other place, even above the limited course, at the best course for his Principal that he can procure.

XIV. If any be drawn on in Commission, and he hath accepted the Bill, and the payment is not demanded at the day, then he must and may debit the Principal for the said Value, as if it were paid, because he is still obliged for the Sum, at all times, and in all places.

XV. The Acceptant of a Bill in Commission, drawn at time on him, may and must,
if

if the Drawer against the time of payment do again call in the Bill himself, and pay the Moneys, demand of him his accepted Bill, and the Drawer is obliged to restore it; but he must before he part with it clearly express and write upon it, that he himself called in the Bill and satisfied it, and tear or cut it through with a Knife for a token of its being made void, and the Drawer is obliged at least to allow the Acceptant half Provision.

XVI. When a Factor is drawn upon to satisfy the Bill out of the Effects or Goods that he hath in his hands to dispose of, then he is alwayes, whatever happen, preferred to those Goods, and must have his Disbursements out of them before any other Creditors can lay any claim thereto.

XVII. If any be drawn upon in Commission, and there afterwards be found any difference in their Accounts, as the Sums and Quantities drawn, the Acceptant is obliged to prove his account by producing the Bills, no other Evidence (for many Reasons) being Proof sufficient. *Scaccia.*

CHAP. XXIX.

*Of being Remitted to in Commission.**Rule I.*

ITs the Duty of him to whom a Bill is remitted,

1. To endeavour to procure acceptance.
2. On refusal to protest, if not forbidden, though not expressly ordered.
3. To advise the Remitter of the Receipt, Acceptance or Protesting thereof, and to send the Protest to him. And,
4. To advise any other third Person that is or may be concerned in it; and all this without delay by the return of the next Post.

II. He that hath Bills remitted to him for the account of a third, or to be at the disposal of a third, cannot place the said Bills either to his own or to the Remitters account, nor to any others account, but he is obliged to observe the order of him only for whose account, and at whose disposal the said Moneys and Bills was ordered and remitted to him.

III. If a Bill remitted for the account, or
to

to be at the disposal of a third, be endorsed or made payable at first to the Receiver thereof, or to his order, he that receives the Bill cannot, if he hath advised the Person for whose account, or at whose disposal it must be, that he hath received such a Bill for his account, or to be at his disposal, revoke his Word to pleasure the Remitter, but must wait for the order of the said third Person; but if he hath not writ nor advised the said third Person thereof, then he may, at the request of the Remitter (or the Remitter at the request of the Possessor) observe the last order, or wait for further orders.

IV. When any have Moneys remitted to them in Commission, and the Principal orders the same Moneys to be remitted further to some other place, or otherwise to dispose thereof, if the said Person to whom the Moneys was remitted do omit this order, or neglect it, and detains the Moneys by him, the same is obliged to make good to his Principal all the loss and damage he can thereby pretend by the not observing his Order and effecting his Commission.

V. If any have Bills remitted to them, to be endorsed and drawn in from other places, and the Principal either limits the course at which he would have them re-valued, or
orders

orders them to be sent back; if he cannot negotiate them at the limited course for want of Moneys, or Rescounter, or Credit, &c. he does then very unwisely if he send the said Bills back in *blanco*, or endorsed, payable to the order of his Principal, because if the Bills were returned with Protest he would make himself lyable to answer for them; but to free himself of the fear of this trouble and loss, if the Bills be made payable or endorsed to the order of his Principal, and the Principal endorses them payable to his order, (i. e. the Factors) he may scrape or blot out that order, and make it illegible, and so send the Bills back again. But then again, if the Bills be originally made payable to the order of him to whom they are remitted, the value of the Remitter, and this can no wayes be altered, then its advisable for him to write on the back of the Bill, that the contents and value was not paid to his order, but to a later order of the Remitters, is yet to be paid.

V I. When any receives a Remise for account of another, and the Bill is not accepted, or accepted is not paid at the due time, but protested, then the Person to whom was remitted, if he hath occasion for Moneys for the Principals account, he may value the Sum on the Remitter (when he returns the Protest and Bills) together with Courtage, Provision

Provision and Charges for the Principals account, giving the person he draws on punctual advice.

VII. When any hath Moneys remitted to him in divers Bills, for divers accounts, for one more, for another less, and reckoning the Sum total of all the Bills, and not advising any, which Bills were for this, and which for that, and which for a thirds account, in case then one of the Remises should be protested for Non-payment, then the Possessor thereof may at his best conveniency re-value the same on the Remitter, and if he cannot get satisfaction there, then the loss will fall upon all the Bills, for whose account the Remises were, and every one must bear a proportion of the loss, *pro Rata*, of the Sum he was to have in those Remises, and if the Remitter stood *del Credere* for any, he must suffer loss, *pro Rata*, with the rest.

VIII. If any have Remises made for Draughts that were formerly drawn on him, and fall due before the Remises do, and so come too late to do the Acceptant any service in order to the satisfying of those Draughts, then he may, if he please, reckon Interest for the disburse of his own Moneys for the time, at 6 per Centum per Annum, and for what is more than fourteen dayes, a full Moneth may

may be reckoned, and half a Moneth for what the time is less than fourteen dayes ; but if it be not his conveniency to disburse his Moneys for the time, he may against the time the Draught falls due value the Sum on the Remitter, and keep the product of his Remises till his further order : But thus to do will give little satisfaction or content to the first Drawer, and will not be much for the credit of the other.

IX. A Factor that is remitted to, and then drawn upon, is not very wise, or else he is easily satisfied, and would gladly work for nothing that will be content with one Shilling *per cent.* Provision, especially if he,

1. Must bear the Charges of Postidge, and dare not place them to the Principal's Account.

2. Or if the Bills must both or either of them be paid in currant Moneys, without the Bank. Or,

3. If the Draughts come sooner than the Remises, and so by Consequence he must nakedly credit his Principal. Or,

4. If the Draughts fall due, though but one day sooner than the Remises, and he must pay the Draughts before the Remises be received.

X. If a Possessor in Commission protest
P not

not in due Time and Form, either for Non-acceptance or Non-payment, he himself is lyable to make good to the Remitter, or him for whose account it was, the Rechange and Charges, though the Acceptant is obliged for no more than the Sum that the Bill is for, and the Drawer, *ipso facto*, discharged.
Scaccia.

CHAP. XXX.

Of Rechange, and Continuance of Exchange and Rechange.

Rule I.

RExchange in its largest Acceptation, is the Value of a drawn or remitted Sum, Redrawn or Remitted by the Payer, or received of the Value, either to, or on the Place directly from which was drawn or remitted, or to, or on any other Place or Fair.

I I. But in a stricter Sense, its taken for the Revaluing or Remitting directly, on or to the first Drawer or Remitter.

III. A true and proper Rechange must also

also exactly answer the Value of the just Sum of that Bill, whereof it is the Rechange.

IV. When any Revalues or Redraws in the aforesaid manner, to the just Sum and Value that he paid, he must add Provision, Courtage, Postidge, Protest, &c. and all other Charges that are usually reckoned; and this sum added together, is the just sum to be Revalued.

V. In Revaluing, the Provision must be reckoned for the sum that is first drawn, Courtage for the Sum revalued or redrawn.

VI. In Remitting of the just Sum, both the Provision and Courtage must be reckoned, according to the Sum remitted.

VII. When a Factor Remits, and Revalues the just Sum of the Remises, and draws a certain Sum, and remits the value to another place, then he must reckon his Provisions of the sum he remits, and not of the sum that he draws, and Courtage for both.

VIII. The Redrawing need not be delayed till after the Draughts are discharged, but may freely and without fear of a Reproof be redrawn the Post day before those Draughts fall due; for a Factor is not obliged, nor is it always

his conveniency, to disburse his Moneys, though but for a few dayes.

I X. Neither is it necessary, or can it be required of a Factor to Remit, before the Remises be received; and if it be done sooner to pleasure the first Remittent, it must alwayes be done under Protest, to suffer no damage.

X. When a Factor hath the advance of the Remises to Remit, he must strictly observe the Order of his Principal, and may, if he cannot come within his limits, delay the remitting, and let the advance lie by him undisposed of, till the Principals further order.

X I. When a Factor hath occasion to redraw for the Principals account, for draughts first drawn on him, he is not so precisely bound to the Order of his Principal, but can, and may (if he neither will, nor can be in disburse) redraw, not only according to Order, and within his Limits; but he may exceed the Order and Limits set him; and if he hath no Order, may redraw without Order, yea, and expressly against Order if need be.

XII. Factors in redrawing, follow their Orders,

Orders, and observe their Limits, when the Debtor for the accepted Bill (*i. e.* the Principal, for whose account it was drawn, or for whose account the same was accepted *supra* *Protest*) having ordered and limited the Acceptant, or him that is to discharge the Bill and Draught for his account, how, and when he may revalue, if the Factor do accordingly, or to more and better advantage than the Principals orders or limits were; in this case the Principal hath nothing to say.

XIII. But its above order and limits, when thus the Factor re-draws on that place and person, that his Principal orders, but in a more disadvantageous course than he limited; and the Principal in this case must be silent and patient, though it be to his loss.

XIV. And its without order when the Principal and Debtor for the Bill did not or could not make Provision for the discharge of the Bill, and therefore gave no order how the Acceptant should be re-imburfed, whereupon the Factor draws on him, because he cannot be in disburse, or will not, thinking it unadvisable.

XV. And its against order when the Principal hath ordered that the Factor shall draw

on another place, or at long time; and being the Factor either could not or would not draw on such a place and person, nor at so long time, he therefore draws directly on his Principal at sight, or at shorter time than he ordered, or redraws on some other place or person, where he can.

XVI. When an Acceptant of a Bill will revalue without or against order, then its most advisable and best answerable, that he draw directly upon the Debtor and Principal, rather than on any else.

XVII. He that is Debtor for a Bill, is and remains still (in respect of the Drawer) Debtor for the Re-change that his Factor draws on him for the discount of his Draughts, and this whether he draw directly on the Principal, or on any other third Person for the Principals account.

XVIII. When any is drawn upon for the account of a third person, and the Acceptant accepts *supra Procest* for the account of the Drawer, and does advise him expressly thereof at the return of the Post, then the Acceptant may (if he get not sufficient Provision from the Principal, or else sufficient orders for his Re-imbursment before the Draughts fall due) revalue upon the Drawer,
and

and is not obliged to seek his Redress first on any third person, for whose account the Draught was. But if the Acceptance was made *supra Protest* with the obligation of the Drawer, then the Acceptant must, if the Drawer require it, first seek his redress on a third person, for whose account it was drawn; and yet he is no further obliged in this case than to revalue on the third person; and if his Bill be protested, or not accepted; nor paid, then he hath his regrefs upon the Drawer, whose obligation he reserved to the last.

X I X. When Provision for a Bill, drawn for the account of a third, by the Acceptant accepted *supra Protest*, with the obligation of the Drawer, is not made by him for whose account it is drawn against the time that it falls due, but orders are only given to revalue the same directly upon himself, or on some other place, then the Acceptant must in this case first consult the Drawer, who hath obliged himself, before he can revalue the same, and advise him, that this, notwithstanding he will yet remain by his obligation till the Sum to be re-valued be re-paid.

X X. When the Acceptant of a Bill drawn for the account of a third, but accepted *supra Protest* for the account of the Drawer, with

the Drawers obligation, &c. doth re-value on a third person at the request of the Drawer, and the said Acceptants Bills are either not accepted, or if accepted, not paid in due time, and so are sent back with Protest, then he that discharged the first draughts, and must also discharge the protested Bills, may re-value the said Sum, with the Charges, Provisions and Protest on the first Drawer; by whose obligation he still remained.

XXI. When a Bill is *supra Protest* for the account, or with the obligation of the Drawer accepted, and the Acceptant afterwards repents, and is jealous whether the Drawer will really accept of his Re-draughts, then its best that the Acceptant suffer the Bills to return protested for Non-payment; but first advise him, that he may take new orders for the discharge of his Bills.

XXII. If any be drawn upon for the account of a third, and the Bill be freely accepted for the account of that third, such a one at the day of payment hath no regress on the Drawer, and the Drawer is not obliged, if the Acceptant re-draw, to accept of his Bills, because the Acceptant by his free acceptance hath discharged the Drawer, and is obliged to look for his re-imbursment from

from the third Person, for whose account he accepted.

XXIII. But in case the Principal in any of the 11, 13, 14 or 15 Cases fore-going, will not accept the Bills of the Acceptant redrawn upon him, because they are without, above or against order, what shall the Acceptant then do? seeing without acceptance there is no obligation on any to pay a Bill of Exchange, and the Acceptant was not so wise as to cause or suffer the Bills to be protested, by which means he could have compelled the Drawer to dance to his Pipe. My Authors, that I remember, have none of them salv'd this case; and though it would seem to be very reasonable and equitable, that the Principal should, according to the Laws of Exchanges, be proceeded against, *Executive*; yet I cannot see that there is any other Remedy for such Factors, but the ordinary one, and to proceed against their Principals *Action, Mandati. Sigism. Scaccia.*

XXIV. *Scaccia.* If Bills be protested for Non-payment, Re-change is due but once, though the Remitter or the Possessor can recover nothing of the Drawer or Acceptant at that instant, and afterwards only Interest, till a contract or composition be agreed upon; otherwise, if Re-change and Interest upon
Interest

Interest should be due in *Infinitum*, the Interest would soon exceed the Principal, and it would be impossible for the poor Debtor to recover, nor is it once due if the Monyes afterwards be paid in the place of payment in due time.

XXV. *Staccia. Usura Pana* is seldom or never due (as, if you pay not so much at such a time, you shall forfeit so much more) for if Interest upon Interest be unlawful, much more this; for that Interest that doth by superfatation, as it were, produce another Interest, can produce no more than in proportion to the Capital; but this is usually much more, and is only added to scare the Debtor, &c.

CHAP. XXXI.

Of Exchanges to and from Fairs in General.

Rule I.

B*Y Fairs* is meant *free and priviledged anniversary Fairs*, which are held at certain places and times, sometimes twice, thrice, and oftner in one year, to which all Dome-
stick

stick and Forreign Merchants are admitted to come and Trade, and for that time to enjoy such Priviledges and Immunities as the Magistrates have allowed and granted.

II. The most renowned and famous *Marts* or *Fairs* in these times in our parts, are *Frankford* on the main, *Leipzig* in *Suchsen* (or *Saxonia*) *Lyons* in *France*, *Modena* in *Italy*, *Besonson* (or *Bisenzon*) in *Spain*, and *Bolzane* in *Tyrol*; but at *Amsterdam* there is found no course of Exchange but to the three first, as *Frankford*, *Leipzig* and *Lyons*.

III. At *Frankford* are yearly two, at *Leipzig* three, and at *Lyons* four Fairs.

IV. And so soon (and sometimes before) as one Fair is ended at one place, Exchanges are made on the same place for the next Fair; but its seldom that any Exchanges are made payable at the second or third Fair ensuing the date of the Bill; yet on these conditions Bills may be made and negotiated, and such Exchanges are as obligatory as any other, if the precise time of payment be clearly exprest in the Bills (though some are of another Opinion) and the Drawer is obliged at the time to perform the contract agreed on, the course, &c. may be as it will.

V. In the respective Fairs Exchanges are made not only on other Forreign places, but also on the same place where the Fair is kept, and that not only between the Fair times for the next Fair, but also for the ensuing Fairs in the Fair time.

VI. When a man draws simply on such a Fair in such a place, then its to be understood of the first Fair next ensuing in that place, and the payment must be made at the usual time of payment in that place and Fair.

VII. Its usual and customary, when Bills are made on a Fair that is not yet begun, that then the time of payment is exprest thus, *At the next ensuing Fair, &c.* but if the Fair be already begun, then they exprest it thus, *At the present Easter Fair, Michaelmas Fair, August Fair, &c.* as the Name of that Fair may be.

VIII. In Exchanging on Fairs, the Drawer is not obliged to furnish the Remitter with Bills sooner than about so long a time before the beginning of the Fair, that they being sent *per Post* thither, can be there before the Fair begin.

NB. This is the custom in the *Frankford* Fairs at *Amsterdam*, but in the Fairs of *Lyons* and

and *Leipzig* the Drawer must instantly give his Bill; and though some Merchants have endeavoured to introduce this order and custom in the Exchanges on *Lyons* and *Leipzig*, yet it could take no effect, though it would tend greatly to the advantage of the Merchants to have Moneys in their disposal for a little time, to the lessening of much Provision that is now paid to the *Lyonsers* and *Leipzigers*, and to the advantage of the Macklers.

I X. If the Drawer do not presently furnish Bills to the Remitter, then he ought, as soon as he receives the Value, give under his Hand and Seal a Writing, specifying the Contract, and obliging himself to the performance of it, and to deliver the Possessor Bills for the value, against the beginning of the Fair.

X. He that remits to a Fair, must demand the Bills so timously that he can send them away to be there before the beginning of the Fair, or at furthest, within the usual time of Acceptance; for by the late arrival of Bills, sometimes in the times of Payment great disorders and confusions do happen.

XI. The Acceptance of Bills payable in Fairs, ought not to be done but in the Fairs,
nor

nor need the Acceptant declare whether he will accept or no, before the beginning thereof; but the Fair being begun, the designed Acceptant must declare, within a certain fixed precise time, whether he will accept or no, or else the Possessor must protest for Non-acceptance.

XII. If Acceptance be made before the beginning of the Fair, and the Bill be payable, then the Acceptance is Obligatory, though it be against the Order, Stile and Custom of the Fair, nor can the Acceptant repent, (but too late) nor any way be relieved.

XIII. The discharging and paying of Bills in the Fairs, is for the most part done by verbal Rescounters, whereof those that make Rescounters do afterwards make and keep exact and perfect Notes: In some Fairs they use only to note the Rescounter in their Day-Books, or Memorial, or Pocket-Books, that can be blotted out again: But in other Fairs the Rescounters must be clearly exprest on Paper, written with Ink; in Books for that purpose, called Rescounter-Books, that in case of any Dispute or Accidences, all Frauds may be prevented; and when the Rescounter is once made, its as effectual as if the Bill were paid with ready Cash.

XIV. If any Payments cannot be made exactly by Resconter for the just Sum, then on the last day of the Pay-Week, if the time will not permit to tell the Sum that day in Specie, they give and take from one another (after they have adjusted the Sum) a Note for the Value that one or the other must pay, and then they can receive it the Week following.

X V. When on the last day of the Pay-Week, (or of payment) the Acceptant does not discharge the Bill, neither by Cash nor by Resconter, then the Possessor is obliged to protest, or else he loses his regress on the Drawer.

X V I. In all Fairs there are but few, at most, and in some but one Notary Publick allowed of, who is to protest, and must keep a Protocal of every Protest, to which every one must have free access to see and know what Bills for Non acceptance, and what Bills for Non-payment are protested, that they may, if they please, in honour of the Drawer or Endorser, accept and pay them.

X V I I. All Fairs have also their own proper Judges, (*pro Tempore*) which usually are chosen.

chosen out of the Merchants that frequent the Fair, and are usually three in Number, one Consul and two Counsellors, who after hearing of the partys, do decide all Differences and Disputes among them; no Lawyers nor Advocates being admitted to plead, and their Sentence is definitive, and must be executed, unless the party that is grieved do appeal to the highest Court of Judicature that is in the place where the Fair is kept.

NB, This laudable Custom is in other places observed, appointing a Colledge of Commerce to hear and determine of all Controversies, either in Merchandizing or in Exchanges among Merchants, where the Process is short, and without delay; and every one is himself (some cases excepted, because of the Infirmities of the partys) obliged to propound and plead his own Cause, and to urge their Reasons, and exhibit their Evidence, and without any other Formality of a Process sentence is spoken, from whence an Appeal lies to the highest Jurisdiction in that place, only and surely this (as also a Court for the determining of Differences about Sea-affairs) is very necessary and usefull in all places of Commerce, and very advantageous to the Trade of any place: Nor can I see any Reason, but both these may very well be under the authority of one Judicature, if every City of Trade would take

take such measures as these, questionless they would tend much, 1. To maintain the Credit and Honour of honest Merchants: 2. To the discovery of many Frauds: 3. To prevent great loss by tedious and chargeable Processes: 4. To the promoting of the Interest of the Trade: And 5thly, To the Credit, Repute and Fame of the City it self.

NB, Every Trader to these particular Fairs, will know the Ordinances and Laws concerning Exchanges there made, so that it will not be necessary to be large upon these; therefore what the Author hath largely insisted on, in the three following Chapters, I shall abridge, and only hint to some select Cases.

CHAP. XXXII.

*Of Exchanges from Amsterdam to
Frankford on the Main, & Vice
Versa.*

Rule I.

AT *Amsterdam* a Remitter can dispose of his Monyes to any place (*Venice* excepted) upon time, in Exchange, making the Bills payable to his Order, and draw the

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same

same in again, without having any Correspondent there, at the place where the Bill is payable, or allowing any Provision at all; and on the contrary, a Drawer on *Frankford* at the Fair time, can draw on *Frankford*, and can supply, Adjust, Rescounter or Prolonge, without having any Correspondent or Factor there.

II. Because by an old Custom, Bills need not be accepted that are drawn on *Frankford's* Fair, till the beginning of the Fair, where-in the Bill is payable; therefore its not usual to make Bills till against that time, unless it be otherwise conditioned.

III. Wherefore it were necessary, that the Drawer should give a Bill or Obligation in the interim; for the furnishing of Bills on such terms as are agreed on.

IV. When the Drawer on the Fair, does remit with his Remitter to the said Fair, the Sum, which he before drew, then that parcel doth mortifie it self; if he remit with another, then he can assign his Remitter on his Drawer; so also when a Remitter does redraw the sum he remitted, then he obliges himself to his Remitter to furnish him with Bills, which when he demands, he assigns him on his Drawer.

V. He that must have Bills to send to the *Frankford's Fair*, must take special notice that it be clearly exprest and named, *By Whom, and On Whom, To Whom, and From Whom the Value is assigned.*

VI. The Assignations on the *Frankford's Fair*, are of the same Virtue and Power that Endorsements on a Bill are.

VII. And the Possessor of a *Frankford's Fair Bill*, that protest for Non-payment, cannot only have his Regress by the first Drawer, but on any of the Assigners, as if they had been Endorsers, and hath over and above this Priviledge, that he may chuse which of the Assigners he pleases, to demand Satisfaction of, being not bound to his man.

VIII. A prudent and circumspect Remitter on the *Frankford's Fairs*, will not receive from his Drawer any Bills to extinguish the Sum that the Remitter hath furnished, if they be made by a third, and made simply payable to his Remitter, or his Order, the value from the first Remitters Drawer, because for such Bills the first Drawer is not lyable to answer to his Remitter; but on the contrary, the Remitter is made answerable to the Drawer, but the

Bills must be made payable to the first Remitter or his Order, the value of the same from the Drawer.

IX. On *Frankford's* (and at no other) Fair, men may treat and condition for the payment of the Bill at the return from the Fair, that is, instead of delivering Bills (or negotiating them at *Frankford* in the Fair time, or discharging them on the day of payment) to pay the same at the return (or sooner or later, as the condition is, at a certain fixed day) at *Amsterdam*, and then according to the time the course of Exchange is proportioned.

X. The usual times of payment at return are, for the *Easter Fair ultimo Junij*, for the *Michaelmas Fair ultimo Novembris*.

XI. If at any time the Term be prolonged till the return, then the Drawer ought to cause the conditions to be noted on the back of that Obligation he gave to his Remitter, whereby he obligeth himself to deliver Bills, or make payment at the Fair, or else to mortgage or vacate the old, and make a new Obligation.

XII. A Merchant that hath credit at *Amsterdam* for the *Frankford's* Fair, can at any time

time, for so short and so long a time, as he pleaseth; draw upon the Fairs, and make use of the Monyes as he sees occasion, and can at any time before the beginning of the Fair remit the same thither, in order to make payment, or he can prolong it till the return, or vacate the former Bills, and make new ones on the next Fair, which Negotiation will be of no more loss to him than sometimes usual Interest is, seeing he hath no Provisions to pay, and only Courtage for the Mackelers, and is far more honourable and profitable for the Drawer than any other kind of Negotiation where Factors must be used, &c.

XIII. If any fail in their punctual payments, either at the Fairs, or their returns, or in delivering Bills according to agreement, and it be sufficiently manifest, then against such a one (if there be such an obligation) there is the same Law, as if there were protested Bills of Exchange, viz. ready execution, with attachment upon his Goods, and arrest upon his Person, and in case of failing the Re-change is also due, &c.

XIV. At *Frankford* are two Fairs yearly, the *Easter* and *September* Fair, the one begins fourteen days before *Easter*, the other on the *Sunday* that is before or after, or on the day

of the birth of the ^{Vol. 1} Virgin Mary, if this day fall on a *Monday, Tuesday* or *Wednesday*, then the *Sunday* before; if on a *Thursday*, &c. then after, if on a *Sunday*, then on that same day; they each continue fourteen dayes, the first Week is called, *The Acceptance Week*, the latter, *The Payment Week*; the times of Acceptance continues from *Mondays* in the Morning till *Tuesdays* at nine a Clock in the the Morning, but may be accepted any time that Week, and so long the Possessor is obliged to stay; but if acceptance be not made that Week, in the next Week, he may and must protest, though he may protest sooner if he please, if the acceptance be absolutely denied: All Acceptances here must now be written; verbal Acceptances are not valid.

XV. If an accepted Bill be not paid on *Saturday* in the *Pay Week* before the Exchange time, or at Exchange time, then the Possessor ought to protest for Non-payment before the Sun set.

CHAP. XXXII.

Of the Leipzig Fairs.

Rule I.

Lipzig hath three Fairs yearly, the *New Years*, the *Jubilate*, and the *Michaelmas* Fair; on which dayes, or the dayes after, according to the *Old Style*, the said Fairs begin; they continue but eight dayes wherein they trade, and buy, and sell; the first or second dayes after the Fairs are begun, acceptance is demanded, but if the Acceptant will, he may delay acceptance till the *Pay Week* after the Fair, which continues five dayes after the expiration of the aforesaid eight dayes.

II. The Possessor may if he will protest sooner, but he must not send the Bill away till the Fair be wholly concluded, but must wait to see if any appear to honour the Bill *supra* Protest; no Protests are admitted of after ten a Clock at Night on the last day of the Fair, and if the Possessor protest not before that time, he loseth his hold that he had of the Drawer; if none appear to make payment of a protested Bill within three dayes

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after

after the Fair is fully expired, then may the Possessor with the first Post return the Bill with the Protest.

III. For Exchanges made at *Amsterdam* on *Leipzig*, Bills must instantly be given, but the Acceptant need not accept or declare whether he will or no till the Fair time; here also Bills that are endorsed are admitted of.

IV. At *Naumbraugh* is also yearly one Fair kept, it begins on *Peter and Paul's* day, and is by some called a *Fourth Leipziger Fair*, in regard all the *Leipzig* Traders trade thither, it continues eight dayes; on the first and second dayes Acceptances are demanded, and at the utmost, all the Bills must be paid on the third of *July*; but if protested, the Bills are not returned till after the fifth of *July*, and after that day, if no payment follow, the Bills and Protests must be returned with the first occasion.

CHAP.

CHAP. XXXIV.

*Of the Fair of Lyons in France.**Rule I.*

AT *Lyons in France* are yearly four Fairs, the *Royal Fair*, which begins the *Monday* after *Epiphany* or *Three Kings day*; the *Easter Fair*, which begins on *St Nisiers day* in *April*; the *August Fair*, which begins on *St Dominicks day* in *August*; the *St Huverts Fair*, which begins on that day in *November*.

I I. Every Fair hath its Payments; the *Fair Royal* hath its time of Payments from the first to the last of *March*; the *Easter* Payments begin the first and end the last of *July*; the *August* Payments begin the first and end the last of *September*; and the *St Huverts* Payments begin the first and end the last of *December*.

III. At *Amsterdam* Bills are made payable at the ensuing or present Payment; but its not usual before one Payment hath begun to negotiate on a following, but on a second or third Payment.

IV.

I V. Bills for Parcels, negotiated on *Lyons*, must instantly be given, and that before the Remitter pay the Value; but Bills made payable at the Fair, are not payable till the payment of that Fair whereof they are made payable, nor need they be accepted till the beginning of the times of Payment, and may be deferred till the sixth day after the beginning of the respective payments, but no longer, within which time Protest must be made: All Acceptances must be made in writing.

V. None can by a full Power negotiate or accept any Bills, unless he first show his full Power to the Judges of the Fair, and cause it to be registred, which is to be observed in all Fairs as well as at *Lyons*, and without this no full Power, &c. is of any effect against the Principal; but the Creditors must look to him who pretended the full Power.

V I. Protests for Non-acceptance need not be sent away before the ending of the respective terms of Payments, but advice must be given thereof before; the time of payment begins the day after the aforesaid six dayes of acceptance are expired, unless it be a Holy-day, and then the day after, and continues to the end of the Moneth; none may pay a
Bill

Bill before the sixth day, but on his own hazard, and after the last day of Payment the Possessor may refuse, if he will, to accept of payment, and may return the Bills and Protests, and demand Re-change and Charges of the Drawer or Endorser; but Protests for Non-payment may be made any time within three dayes after the term of payment is ended; if then not made, the Drawer and Endorsers are not lyable to answer.

VII. Possessors of protested Bills must seek their Redress on the Drawers and Endorsers within a certain and fixed time, viz. all Bills drawn or made within the Kingdom of *France* within two Moneths time; drawn on *Italy, Sweitzerland, England, Holland, Germany and Flanders* within three Moneths time; *Spanish, Portugal, Polonia, Sweden, Denmark* Bills within six Months time, or else he loses his Redress on the Drawer and Endorsers.

VIII. All Bills payable in any payment are accounted fully paid and satisfied, in respect of the Inhabitants, within one year, and of Strangers within three years after the same should have been paid, and the Possessor of the Bill hath no redress on the Acceptant after such a time, unless he make it appear that he endeavoured to procure payment and could not.

CHAP. XXXV.

*Of Debt-Exchanges.**Rule I.*

IN a pure and real Exchange the Drawer receives Monyes of the Remitter, and gives Bills of Exchange, wherein he promiseth himself, or by his order to pay the value he received, according to the conditions in ready Money; but in mixed or Debt Exchanges the Drawer receives no Monyes, but is Debtor, and gives Bills to his Creditor (who is reckoned and accounted of as the Remitter) for payment of his Debt.

II. Such Bills are made either for the recovery of old Debts, or else to assure the Creditor of precise payment for those Goods the Debtor hath bought at time.

III. Whether the Debtor make the Bills payable by himself, or by any other, or whether the Debtor and Creditor agree about the course of Exchange or not, the Debt doth change its nature, and the Debtor that gives a Bill of Exchange upon himself, or
another,

another, doth make himself lyable to the Law of Exchanges, and may upon failure of payment be prosecuted with ready execution, attachment upon Goods, and arrest upon his Person.

IV. A wise Creditor will at the Receipt of such a Bill from his Debtor make an absolute agreement and contract concerning the Courfe, and presently upon the Receipt thereof, credit his account of Goods, and debit his account currant for the Value.

V. Its not necessary in a Bill to expresse whether the Value was paid in Monyes, or was Rescoutered, or in Goods, &c. if the Debtor do but effectually receive the Value, or it tend to the discharging or lessening his Debt.

VI. He that gives a Bill for the payment of an old Debt, or for Goods bought, &c. he must demand of his Creditor an Acquittance, wherein he acknowledgeth satisfaction for such an old Debt, or such Goods, in such and such a Bill of Exchange received, or for so much of the Debt as the Bill of Exchange reacheth to.

VII. And in such a case the Creditor, if wise, will demand a *Recipisse* (or a Note) from

from his Debtor, wherein he confelleth the Receipt of the Value of such a Bill, either in an old Debt, or for Goods bought, either for the full payment thereof, or for lessening the said Debt.

VIII. When a Creditor hath received a Bill from his Debtor in full, or in part of his debt, he must not be perswaded by his Debtor in case he at the day of payment be not punctual, under pretence to lessen the Charges, and not to disgust the Debtor, not to follow the strict course and law of Exchanges by protesting, &c. nor should give the Acceptant longer time if he desired it, unless the Debtor do give him under his own hand, this if he do so, it shall be no prejudice to him, and this notwithstanding he shall have the Law in force against himself, as if he had actually protested in due form and course; for without this the Debtor might disown any such order or request made to the Creditor, and in case he pay not, set his Creditor at defiance, as having neglected his time and right, and he the Debtor is therefore not obliged to answer.

IX. When the Creditor receives a Bill from his Debtor, by him drawn on another in another place, with request to demand the sum, and in case of payment to place it to his

his account in full, or part of payment of his Debt, then let the Creditor speak with the Debtor, whether he shall draw or remit the product, and also know of him, by whom he shall cause demand to be made, that in case of loss there may be no dispute.

X. The Bills that a Creditor makes himself upon his own Correspondent, at the request of the Debtor, when he cannot conveniently pay that which he should pay at the day of payment, must be reckoned to be mixed or Debt Exchanges.

XI. When it falls inconvenient for the Debtor to pay his Debt at the time, and he desires a longer time, promising satisfaction for the time, if it also fall inconvenient for the Creditor to wait, then usually, if the Creditor be satisfied in the sufficiency of his Debtor, at his request he may draw on his own Correspondent for his Debtors account, with order to revalue the same at the day of Payment on his Debtor.

XII. If a Creditor draw thus for the account of his Debtor, he ought (to the end the Debtor may know what Sum he is to pay for the Re-change) make those Bills single and apart for the just Sum that his Debtor must pay, or at least order his Correspondent
to

to keep an account of such a specified Sum & part, and to revalue the same.

XIII. And to distinguish the account apart, the Creditor or Drawer usually orders the Acceptant to draw on the Debtor, with his obligation, or upon himself, for the account of the Debtor.

XIV. Its also usual, that one Friend to pleasure another, draws on his Correspondent *per Cents* apart (for a seperate account, and to be kept apart) that the Friend may have the use of the Monyes till the time of the payment of the Re-change.

XV. In all cases the Acceptant looks upon the Drawer, who must answer for the Draughts and Re-draughts, but the loss by Exchange, and the Charges must come to the Debtors, account or to his account whom to pleasure, or for whose account the Bill was drawn.

CHAP.

CHAP. XXXVI.

Of Discounted or Rescounted
Exchanges.

Rule I.

IN a real compleat Exchange there is usually four several Persons concerned, as, the *Drawer*, the *Remitter*, the *Acceptant*, and the *Possessor of the Bill*; but in a Discounted or Rescounted Exchange the *Drawer* and the *Remitter* may be one and the same Person, and that in four several cases; As,

1. When he hath to draw and to remit both together, from and to one place, and both for his own account.

2. When he hath to draw for one and to remit for another.

3. When he hath to remit to one, and to draw for another account. And,

4. When he must draw for another, and remit for a thirds account.

I I. He that is *Drawer* and *Remitter* both for his own account, and draws on one, and remits to another Correspondent, may make and calculate the course of Exchange in his

R

Books

Books as he pleaseth, and need give no man any account thereof; but he that Discounts for anothers account either way, must without delay either advise his Correspondent, or his Principal, or both, the true course of Exchange, as then it was effectually agreed on at that time on the Exchange, and in case the Course hath either greatly advanced or declined that day, then in equity he ought to allow his Principal the middle Course.

III. In a discounted Bill, where the Drawer is the Remitter also, he ought to express the same in these words [*The Value in my self*] but if he will not that the Acceptant should know so much, then he may make the Value of any other, advising the Possessor, that he himself is the Remitter, and the other Name is but added *pro Forma*.

IV. If any draw or remit for anothers account, who is not named in the Bill, its not necessary to advise that the Value is discounted.

V. He that discounts in himself, and gives advice thereof, whether it be done with or without a Bill in Form, neither may nor can re-call the same, without the consent of those that are concerned.

V I. He that hath an opportunity to discount, may place Courtage to his Principals account, though he pay none; and so if any stand good for the Remises, or ordinarily hath done, may also place usual Provision to account, though he run no *risco* or hazard.

V II. One and the same Person may in divers other respects, represent two, or more Persons, in Exchanges; for he can be, 1st, *Drawer* and *Possessor*. 2dly, *Drawer* and *Acceptant*. 3dly, *Remitter* and *Possessor*. 4thly, *Possessor* and *Acceptant*. 5thly, *Drawer*, *Remitter* and *Possessor*.

V III. When any makes Bills, payable to himself or order, he is both *Drawer* and *Possessor* of the Bill, till he draw it in or endorse it: *Scavia*, The Stile of Merchants hath introduced this Custom, contrary to the Axiom of the Common Law, that a man may pay to himself.

I X. But Drawers seldom make Bills payable to themselves, when to they draw upon is with them, or they themselves with others in good Credit.

X. Great Prejudice is to be said in endorsing Bills. payable to the order of the
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I X. But Drawers seldom make Bills payable to themselves, when he they draw upon is with them, or they themselves with others in good Credit.

X. Great Prudence is to be used in negotiating Bills, payable to the order of the

Drawer, because such Bills are usually drawn on those that begin to halt, and are accepted before they be drawn in, and the Drawer makes use of them to furnish himself with Moneys in a necessity.

X I. He that makes Bills payable by himself, and accepts of the same to pay them, he is both Drawer and Acceptant.

XII. When a Drawer accepts his own Bill, and promiseth to pay the negotiated Sum, then he need not accept the same again; But if he direct the Bill to himself, as if he were a Stranger, then let the Possessor or the Remitter get him to underwrite, *Accepted, &c.*

XIII. When a Bill, payable by the Drawer, is not protested within the Respite dayes, then the Possessor doth not lose his Right, because he as Acceptant, is, and remains obliged; but he looseth his Redress on the other Endorsers, if it be endorsed.

XIV. When the Respite dayes of a Bill, payable by the Drawer, are expired, then the Possessor is obliged to proceed, according to the Law of Exchanges, by ready Execution against his Person and Goods, without being obliged

obliged to return the Bill and Protest, to the place from whence it was done.

X V. When a Remitter orders the Bill to be made payable to himself or order, then he is both Remitter and Possessor, till he endorse and negotiate it.

X V I. Remitters order their Bills to be made payable to their Orders, sometimes because they know not themselves to whom they shall be payable, sometimes because they will not let the Drawer know to whom they remit.

X V I I. A Remitter remitting for anothers Account, does very ill, if he (though he stand *del credere* for the same) order the Bills to be made payable to himself, or order, and endorse the same to his Correspondent; the Reasons are in the 8th Rule of the 27th Chapter.

X V I I I. When the Remitter orders his Bills, to be made payable to him on whom the Drawer draws, (who is the Acceptant) then is the Possessor the Acceptant, and the Bills are then made, *Pay to your self.*

X I X. When any is Possessor and Acceptant of a Bill, and he will not accept of the

same for account of him, for whom it is drawn, then he may and must protest against himself, as possessor of the Bill, (if the Remittent and the Drawer be two distinct Persons) as if he the Acceptant were another distinct Person for Non-acceptance, and send both the Bill and the Protest back to him from whom he received it, that he may make use thereof against the Drawer. And thus also he may if he will accept *supra Protest*, in honour of a Drawer or Endorser, &c.

XX. When any Acceptant is to pay to himself, and he returns Answer that he hath, or will accept the draught, then he cannot repent thereof, nor cannot afterwards, by a Protest for Non-acceptance, or Non-payment, help himself.

XXI. If any be drawn upon in a Bill payable to himself, and he accepts of the same, in such a case the day of Payment is reckoned to be the very day it falls due, which past, the Bill is accounted as paid, no respit dayes being allowed.

XXII. When a Drawer makes Bills, payable to himself, or order, and Rescoters, or finds the value in himself, then is he Drawer, Remitter and Possessor. The Drawer can also be the Remitter and Acceptant,
and

and Possessor and Acceptant, and so in three respects, he can represent three distinct Persons; thus also the Remitter can be the Acceptant, and Possessor and Acceptant, and this all at once; but these cases seldom happen.

XXIII. In Exchanges, two Persons can each of them have two Relations; As,

1. One can be *Drawer* and *Remitter*, the other *Possessor* and *Acceptant*,

2. *Drawer* and *Acceptant*, and *Remitter* and *Possessor*.

3. *Drawer* and *Possessor*, and *Remitter* and *Acceptant*.

And he that represents two or more Persons, may do all that any of them might do, if distinct and several Persons.

XXIV. When a *Drawer* and *Remitter*, and the *Possessor* and *Acceptant* are but two distinct Persons, each of them representing a double Person, then there is a double discount, or resconter; and this for the most part happens betwixt Correspondents, that have open Accounts each with other, and for other accounts, and one hath occasion for Moneys in one place, the other in the other. But this Exchange can be performed without formal Bills of Exchange, alone by advice and correspondence, about adjusting the

course of Exchange; but if any third Person be concerned therein, then its most advisable to make formal Bills of Exchange,

X X V. The advice of the Acceptant to the said Drawer, that he hath taken notice of, and conform to the advice from the Drawer hath placed the Draught to account, &c. doth so firmly oblige the Acceptant, (whether a third Person be concerned therein or not) as if he had accepted a formal Bill of Exchange.

X X V I. When the Acceptant is Possessor of the Bill, and the Drawer is the Remitter also, and the Acceptant scruples the acceptance of the Draught, according to advice; in such a case its not necessary for him to protest against himself, because its enough for him to return the Bill, with advice, that he is not inclined to accept the same.

X X V I I. When a Drawer draws upon himself, and the Remitter orders the Bills to be payable to himself or order, then the Drawer is the Acceptant, and the Remitter the Possessor of the Bill; and in this form are usually all Debt-exchanges made (whereof we treated in the former Chapter.)

X X V I I I. It may fall out, but its very seldom,

seldom, that a Drawer makes Bills payable to himself, by the Remitter, and then the Drawer is Possessor, and the Remitter Acceptant of the Bill.

The Remitter may also be an Acceptant, when he hath to remit for his own, or any others account, and negotiates with him, who must draw upon him, which may sometimes fall out.

XXIX. If the Possessor of a Bill be indebted to the Acceptant, a just and liquidated Sum already due to him, the Acceptant may discount with him, and this is good and effectual Payment: But if it be not a liquidated Sum, the Acceptant cannot discount, nor if the Possessor who procured the acceptance, have endorsed it to another, unless he can prove that the present Possessor hath paid no Value, and that this was done by them only *pro forma*, and to defraud him.
Scaccia.

CHAP.

CHAP. XXXVII.

*Of Conditional Exchanges, or Bills
of Bodomery.**Rule I.*

IN such Bills as these the Drawer doth not absolutely oblige himself to payment, but on a certain condition agreed upon.

I I. And in these Bills the condition must be clearly exprest, on which condition the Acceptant must accept and pay, else not; wherefore if the condition be not exprest, these kinds of Bills are lyable to great Disputes and Contests.

III. The Acceptance of a conditional Bill obligeth the Acceptant (whether he be the Drawer himself, or any other) absolutely to the Payment, if the Condition agreed upon be performed, or the Possessor will oblige himself to the performance thereof.

IV. The Possessor of such a Bill is sometimes obliged to perform the Condition, sometimes not; Exchanges grounded upon
impossible

impossible, or unlawful, or indecent Conditions, are, *ipso facto*, null and void.

V. When he is absolutely obliged to the performance of the Condition, its not enough for him to mortifie the Bill, and not demand Payment thereof, but he is obliged to make good to the Acceptant the Loss and Interest that the Acceptant, or any other concerned therein, for Non-performance of the Condition, is likely to suffer.

V I. When the Possessor of a Conditional Bill is not absolutely obliged, then if any thing happen without the Possessors fault, that may hinder him from performance of the Condition, this does not alwayes free and discharge the Drawer or Acceptant, but he is in such a case obliged to pay the Bill, though the Possessor do not perform the Condition, if he will but make good the loss to the Acceptant or Drawer.

As for Example :

A. lives here, and contracts with *B.* dwelling at *Venice*, That he shall provide him a Pack of Saws, which Pack the said *A.* shall buy for the account of *B.* at the lowest Price, but shall send them to *Venice* on his own *Risco*, and shall have for his Provision 2. and for the disburse of his Monyes and the *Risco* 15 *per Cent.* but *B.* shall be obliged to pay the
the

the Costs and Charges, and the whole Product eight dayes after the arrival of the said Pack of Says at *Venice*. This all agreed upon and done, the Pack of Says is Shipped, and the account thereof sent, and *A.* at the same time values upon *B.* the whole Sum, and makes the Bill as followeth.

Amsterdam, Octobris 23. anno 1680. per Ducat—

“Eight dayes after the arrival of the Pack
“of Says, No 1. as in the Margent, at
“*Venice*, pay upon good delivery, for the
“Value of the same, to *C.* the Sum of
“Ducats——*adica.*

To *B.* in *Venice.*

A.

Now when *B.* accepts the Bill, then he is obliged upon the delivery of the Pack to pay to *C.* the Sum exprest in the Bill, though the Says should fall considerably in Price before that time. But if the Says are lost at Sea, and never arrive, then the Acceptance is null and void, and the Bill is mortified; and if they are damaged only, and do arrive, then *B.* must receive them, and pay the Bill he accepted; but he must deduct from the Value, as much as impartial Merchants shall judge the damage may be esteemed at, because *A.* is considered as the Insurer.

VII. Amongst conditional Bills, Bills of
Bodomery

Bodomery may be reckoned, that is, Bills that are made upon the Keele of the Ship, which are accidentally conditional, in regard its not in the power of the Possessor, but only depends on Providence, to give a Ship a prosperous Voyage.

VIII. The Bodomery-Bills that are usually made at *Smyrna*, and other places in the *Levant*, wherein the Shipper acknowledges the Receipt of such and such Goods into his Ship, from *A.* to deliver the same upon safe arrival to *B.* and that the said Goods are incumbered with a Debt of a 1000 *Reals*, upon Bodomery at so much *per cento*, the value received of *C.* payable ten dayes after the arrival of the Ship;

To *D.* for his own Account, 300 *Reals*.

To *E.* for the Account of *F.* 300.

To *G.* for the Account of *H.* 400 *Reals*.

This being underwrit by the Shipper, is as much as a conditional Exchange, which if *B.* accept, then he is obliged to make good and pay the Sum, and may receive the Goods, paying the Shipper his Freight and Avaridge; but if there be extraordinary Avaridge, or if the Goods be damaged, then the Sum of the damage, and of the extraordinary Avaridge, must be deducted from the Sums that *D. E.* and *G.* are to receive, they being as Bodomerers or Assurers.

I X. They to whom Goods are addressed that are incumbered with Bodomery, are as little obliged to accept of the Bodomery-Bills, as an Acceptant is obliged to accept Bills drawn upon him; but if they have once accepted, they are then according to the Law of Exchanges obliged to make punctuat Payment at the day appointed.

X. If any to whom Goods, burdened with Bodomery, are address, refuse to accept the Bodomery Bills, then the Possessors of the Bills are obliged to make Protests for Non-acceptance, and then may request the Magistrates to authorize him to receive the Goods, and to sell them, and dispose of them to him that will give most, or that they may be put into the Hands of another to be disposed of, that out of the product of the Goods the value of the Bodomery-Bill may be satisfied; but they must have a care of acting any thing in this matter, without the Authority of the Magistrate, nor must they without his Authority, admit any other to honour the Bills, and receive the Goods, and dispose of them at his pleasure.

XI. When all this is done by the authority of the Magistrate, as above is declared, and there is found to be more made of the
Goods

Goods than was required, to the discharge of the Bodomery - Bills, then that may remain in the Hands of the Person that had the Goods in disposal, or be paid into the Hands of the Magistrate, for the use of the true Owner of the Goods. But if there be short of what the Sum in the Bodomery-Bills requires, then the Possessors of the Bills have no Redress upon him, to whom the Goods were addressed, nor upon the true and proper Owner thereof, no, not upon the Factor or Loader of the Goods, or the Drawer or Receiver of the Moneys paid upon Bodomery, unless he hath by a special Contract obliged himself thereunto.

XII. Among conditional Exchanges may be reckoned, those Bills that are given upon account of any Wager made, or for the assurance of things that are yet *in dubio*.

XIII. Bills made upon account of a Wager, &c. are either single, or reciprocal and mutual.

XIV. Single are they, when one gives Moneys, and the other receives it at the same time, accepts a formal Bill of Exchange, payable to him that gave the Moneys, for the payment of a greater Sum than he received at the day of Marriage, or at the surrender

render of such and such a Belfagured City, &c. or at any other uncertain and dubious event.

X V. If in the case of Wagers, if Moneys be not given by the one, and received by the other, the Law allows no advantage against him that gives the Bill; but if he have received Moneys, then he is obliged to repay the same, with Interest, and no more.

X V I. Conditional Exchanges for assurance, are two-fold; for some tend to the Security of the Drawer or Remitter, some to the Security of the Possessor.

X V I I. Conditional Exchange, that is, for the Security of the Drawer or Remitter, are such Bills as an Out-dweller makes, or causeth to be made, for the discharge of other Bills by him accepted, which must be paid in another place, or such as any man makes, to discharge Bills drawn, but protested for Non-acceptance, or if accepted, for Non-payment, if the Drawer had timely notice of his Acceptants failure, or that he would not pay.

X V I I I. Conditional Exchanges, that are for the Security of the Possessor, are either such as are for the Security of the
Re-

Re-payment, and are made after this manner:

Eight dayes after the producing of an Acquittance from E. whereby he acknowledgeth to have receiv'd of D. of Antwerp 200 l. Flemish, I promise and oblige my self to pay to D. 1200 Ggg, currant Monyes, for the Value of the same Sum. Tours,

XIX. Or else for the Security of requesting some favour and service done, and then Bills may be made thus:

Fourteen dayes after I am made Alderman, (or after I have obtained such and such a Suit of Law, &c.) I promise and oblige my self to pay to A. the Sum of 100 l. Flemish, the Value, &c. Tours,

XX. When a conditional Bill is not accepted, or if accepted, is not paid, then the Possessor may protest and seek his Redress and the Recovery of his loss by the Drawer.

XXI. In a Protest of a conditional Bill, whether for Non-acceptance or Non-payment, the Possessor must look to this, and observe that he insert and prove that the con-

dition was performed, or else that he was ready and willing to perform the same, or else the Protest is of no value.

XXII. *Sigism. Scaccia.* In case the Possessor of a conditional Bill, who is absolutely obliged to the performance of the Condition, would mortifie the Sum, and will not demand payment, nor perform the condition, then the Acceptant may compel him thereto, by depositing the Monyes, and protesting against the Possessor for Non-performance of the Condition, and for all Damages, and presently thereupon proceed against him, according to the Law and Custom of Exchanges, and the reason is, because he, the Possessor, would have done so against the Acceptant, if he had been tardy.

XXIII. If a Condition, whereon an Exchange-Contract is grounded, were once possible after the Possessor had procured Acceptance of the Bill (if the Possessor were obliged to perform it) or after the Remitter received the Bill from the Drawer (if the Remitter obliged himself to performance) and afterwards should be morally impossible, they neglecting the opportunity, yet they will be oblig'd to make good all the Damage and Loss that the Drawer or Acceptant, or any other concerned, can prove they suffer by

by it, because this Condition was the cause of the Contract. *Scaccia.*

XXIV. But as the Possessor of a Bill is obliged to demand and procure Acceptance, &c. so in this case the Acceptant or the Drawer, &c. is obliged to demand Performance of the Condition; for, *Ebensum Conditionis, non constituit debitum in mora, sine interpellatione.* *Scaccia.*

XXV. A Condition may be said to be performed, though it be not actually performed by the Possessor, if another do it by his order, or if another that is concerned in it own it as *quasi* performed, and this will oblige the Acceptant to pay: *Astutus*; If *Titus* pay to *Sejus*, then pay to *Thomas*, &c.; If *Sejus* and *Titus* discount, or if *Sejus* acknowledge himself satisfied, the Condition is performed. *Scaccia.*

CHAP. XXXVIII.

Of Exchanges pro Forma.

Rule I.

VVhen any hath a Debtor, on whom he would draw, and yet would

not run the Hazard of having his Bill returned, he may make Bills *pro forma*, payable to the order of his Friend, or to his Servant, and to make the Bill more formal, he may insert, that he hath received the Value of another, though he hath not.

II. Another mans Name, in a Bill *pro forma*, may be used as Remitter, with or without his knowledge or consent, and sometimes a feigned Name may be used.

III. It may be done without his knowledge or consent, when the Bill is made payable to a third, or any other Person, or his order, and in such a case a known or unknown Person may be named as the Remitter, yet, a feigned Name, it may be what it will.

IV. Another mans Name may be used as Remitter, with his consent, when the Bill is made payable to him, or to his order.

V. When a feigned Name is used, or any true Name, without the Persons knowledge, and only *pro forma*, then the Drawer must necessarily advise the Person to whom, or to whose order it is payable, that the Value is only set *pro forma*, and the Name is feigned, or used without the Persons knowledge,
and

and therefore he the Drawer sends the Bill himself. But if any mans Name be used with his consent and knowledge, then usually the Bills are made payable to his order, whose Name is used, who is Remitter *pro forma*, and then this said Remitter *pro forma* acts as if he were effectually the Remitter, demanding Acceptance and Payment in his own Name; and thus the Correspondent need not know but that the Bill is real, otherwise he must know the truth, and that the Bill was only made *pro forma*.

V I. There ought circumspection to be used, in consenting to the making use of a mans Name, in a Bill *pro forma*, payable to his order; for such Bills cannot be drawn in, nor will they be paid, but upon the endorsing of the Bill, by him to whose order its payable; and an Endorsment, if it be only at the request of the Drawer, and *pro forma*, doth oblige the Endorser to the Possessor of the Bill really and absolutely, and not formally only.

V II. When a Bill, wherein another mans Name is used *pro forma*, is made payable to his order, and is drawn in, or negotiated and endorsed by the same Remitter, *pro forma*, then the Possessor of the Bill must make good the value to the Endorser, and

not to the Drawer, though he know certainly that the Endorser's Name is only used *pro forma*, except the Endorser hath given an Order under his Hand, to make the same good to the Drawer, or unless the Endorser be absent, and at the request of the Drawer had only endorsed it in *blanko*, and yet then the Drawer is obliged to secure the Possessor of the Bill from all Damage and Pretences that the Endorser may hereafter make.

VIII. He that to pleasure his Friend, suffers his Name to be used *pro forma*, as the Remitter, willingly and knowingly, and does draw in and endorse the said Bill, whether he receives the Value himself, and afterwards sends it, or pays it to the Drawer, or whether he assign the Drawer upon it, and lets him receive it himself, he ought (though the whole Negotiation concern not him at all) to take notice thereof in his Books, and formally enter it, at least, in his Waste-Book for Memories sake.

IX. When a Bill, *pro forma*, is made payable to any man's order, and is drawn in and endorsed, the Endorser doth most prudently if he receive the Value himself, or order the Drawer to assign upon him, that the Drawers Alligation may be his Acquittances.

X. When any draws upon his Debtor, and to prevent Lois by protesting, makes the Bills payable to the order of any that will, after Acceptance procured, draw it in, or order his Correspondent to receive it, and *pro Formâ* makes the Value received, he must observe well whose Name he makes use of, and to whom he sends such a Bill, that in case the said Remitter, *pro Formâ*, should happen to draw in the said Bill, and the same should be protested for Non-payment, and the Endorser should be Insolvent, he the said Drawer should be obliged to pay the Re-change to the Possessor of his Bill, without having received the Value, or if the same should be paid, he do not change a bad Debtor for a worse, and quite lose his Monyes.

XI. When a Drawer dare not draw in the Bill, the Value wherefore he hath made received *pro Formâ*, fearing the Acceptant should not accept, or not pay if he did accept, and therefore makes his Bill payable directly to some living at the same place with his Debtor, and does advise the said Correspondent, that for Reasons known to himself, the Value is made received *pro Formâ* only; in such a case the Possessor must be prudent, in case the Drawer is not very sufficient and honest, for he ought not pay the Monyes he hath

hath received on that Bill, unless the Person whose Name is used in the Bill, do order him to follow the Directions of the Drawer in the disposal of it, or unless the Drawer give him other sufficient satisfaction.

XII. Among Exchanges *pro forma* must be reckoned; those Bills that are drawn on Debtor, but are sent to the Drawers Creditor to be paid to him, or his Order, the value of the same *pro forma*, concerning which Bills he makes no agreement with the Creditor concerning the Course, only requesting him to procure Payment, and place it (when received) to his account.

XIII. A Debtor that gives such a Bill to his Creditor, may demand a Receipt from the Creditor, wherein he acknowledges the Receipt of the Bill, and that his Name, as Receiver, is only used *pro Forma*, and that he doth oblige himself to demand the same, and when paid, either to remit it or make it good to the Drawer (or Debtor) according to the course of Exchange; but in case he receive not the Sum, the Drawer or Debtor shall not be put to any further Charge for Protests, Postage, &c.

XIV. A Creditor that accepts of such a Bill from his Debtor would do well and wisely

wisely to let the Drawer or Debtor give him a Note under his hand, whereby he desires the said Creditor to send his Bill to his Correspondent, or to demand acceptance and payment, that in case the Monyes should be received by the Correspondent, but not remitted to the Creditor, or being remitted, the Remises are not paid, or the Creditor not protesting in due manner and form, &c. the Debtor may have no occasion to complain of his Creditor, and force him to stand to the loss.

XV. When in such a case the Debtor agrees with his Creditor concerning the course, whether before or after the Acceptance thereof, and does credit his account current for the sum; or else when another, whose Name is used *pro Forma*, agrees for the course with the Drawer, and pays him the Value, then this Exchange, *pro Forma*, loses its nature, and becomes real and actual; and in case of protest, the Drawer is obliged to make good the Re-change and Charges.

XVI. When such a Bill, at the request of the Debtor, is by the Creditor drawn in, and the Value is made him good in the account current; in such a case the loss by Re-change and the Charges come to the account of the Drawer or Debtor; but if the Creditor

Creditor draw in the Bill without the order of the Drawer or Debtor, then he himself must bear the loss, if any happen.

CHAP. XXXIX.

Of Dry-Exchanges,

Rule I.

MERCHANTS Exchanges do properly consist in a giving Monyes in one place, to receive the Value at a certain course agreed on, in another. Dry Exchanges consist in a giving of Monyes also, but the repayment is to be made after a certain time in the same place where the Monyes was given, and such a sum certain over and above, as the giver of Monyes can get and agree for, which is Interest at least, and sometimes more. So that the distance of places is a Substantial or Essential part of Exchanges, and as the Marrow and Soul thereof, which being awanting in these sorts of Exchange, they are therefore called, *Cambia Siccæ*, Dry Exchanges.

II. In this kind of Exchanges, sometimes the Sum to be repaid, for the Sum received, is fixed, determined and certain, sometimes uncertain and accidental.

III.

III. When the Sum to be re-paid is fixed and certain, then the Giver hath a certain and fixed Profit and Advance, which is also contrary to the nature of Real Exchanges, and this is properly called the *Usurers Exchange*, by which they may more securely oppress their Debtors:

IV. For usually they have one of these three Designs in their Eye, that dispose of their Monyes after this manner:

1. That they may be sure of their Monyes at the appointed time.

2. To get a certain Interest, and to have better security for their Monyes than the usual Bills, Bonds and Obligations are. Or,

3. To drive an unlawful Trade of unlawful Usury.

V. He that on this manner disposeth of his Monyes, can at any time when he pleaseth, make himself Master thereof again, if the Bill be made Payable to himself or order; for he can then at any time negotiate, and draw in the said Bill with Reputation and Credit, and let it be drawn in from any other place, which he cannot do with any other Obligations, Bills, Bonds, or Recognisances, &c.

VI. And such a one doth secure his Monyes better by such a Bill of Exchange than by any Obligation whatever, because if the Bill be not paid at the day punctually, he hath present Execution ready at hand, by Attachment and Arrest, and he hath preference before all other Demanders, as if he had a Judgment confest.

VII. An Usurer hath also this advantage by such Bills of Exchange, that the Sum to be paid is only mentioned in the Bill, not the Sum that was received, so that it cannot be known what Interest such a one receives.

VIII. With these kind of Exchanges, the Exchanges upon *Frankford's* Fair and Return have a great Affinity, when the Drawer and Remitter do negotiate together upon the Return, &c.

IX. The Value agreed upon to be re-paid is uncertain and accidental, when in the bargaining they agree concerning the Course to such and such a Place or Fair; but the Drawer is obliged to pay his Monyes in the place where he received it, and in such a Course as shall be at the time of payment, to such a certain place.

As for Example :

E. gives F. 1000 Ggd. on the *Frankford's* Fair, with condition, that the Sum shall not be paid at *Frankford*, but at the return of the Fair at *Amsterdam*, and that in such a course as Exchanges shall be made at from *Frankford* to *Amsterdam*, payable at the same time.

This sort of Exchange is very frequent and usual in *Italy*, and is condemned by the *Papists* as unlawful, grounding their Decree against them upon the unlawfulness and sinfulness of gaining *Monyes upon Monyes*, or giving *Monyes upon Interest*, or to have a certain profit for the Loan, or Exchange of *Monyes*. But our common Usurers account this no sin—*Sigism. Scaccia*. he only seems to plead for the lawfulness, and doth wisely assert, That if there be Extortion, or if commutative Justice be not the ground of these Exchanges, they are Unlawful.

CHAP. XL.

*Of Bills of Exchange being lost.**Rule I.*

WHen any Bills are made for a Sum of Monyes, usually two or three are made of the same date and tenor, that if one be lost, the Remitter or Possessor may make use of the other.

I. When the Post goes uncertainly to any place, on which Exchanges are made, or by Sea, or when the Remitter orders the Bills to be made payable to his order, with a design to send the first directly to the place, that Acceptance may be demanded, and to draw in the other some other way by endorsing it, &c. then three or four Bills may be made, &c.

II. When the Remitter declares to the Drawer, that the Bills he received are lost, and that he cannot find them, and desires the Drawer to re-pay the Value to him, offering to secure him from all damage for the future; then the Drawer doth very imprudently if he

he do it, though the Monyes was for his proper account, and he could otherwise do it with little inconvenience to himself, because the Remitter must be content to take new Bills, and cannot compel him to restore the Value.

I V. And in giving new Bills the Drawer must use prudence and circumspection, and see that he make his new Bills of the same date and tenor of the former, only adding this difference, that if he had given a *prima* and *secunda* before, he now follow the number, and give a *tertia* and *quarta* Bill. And yet,

V. No prudent Drawer will after the day of Payment of his former Bills, give his Remitter *tertia* and *quarta* Bills, unless the Remitter give sufficient security to indemnifie the Drawer.

VI. Its the Duty of all Possessors of Bills, to have a special care of their Bills, and to keep them safe; and a prudent Merchant will, upon the Receipt of any Bills with blank Endorsments, fill them up, and perfect them, lest he should lose them, and another find them.

V I I. As soon as a Possessor observes that he

he hath lost a Bill, he ought instantly, at least before the day of Payment, to advise the Acceptant thereof, that he pay it to none but to him or his order, and if any other come to receive it, to take notice of him.

VIII. When the *prima* accepted Bill, which is made payable to Order, is at the place where the payment must be made, and he to whose order the same is payable against the day of payment, when he will draw in the *secunda*, cannot find the *prima* accepted Bill, but hath lost it, and hath no *tertia* nor *quarta* Bill from the Drawer, nor can get them from the Drawer, he being dead or absent, &c. yet the Parcel may be drawn in and negotiated; if the Endorser (in case his Hand-writing and Seal be unknown to the Acceptant) do send a full Power and Letter of Attorney to him to whom he would have it payable, to receive the same; but if the Endorser's hand be well known, and he himself be to be credited, then an order in writing to the Acceptant, to pay it to such a one, is sufficient, he engaging to secure him from all damage, &c.

IX. But then also, a prudent Acceptant will pay no Bill that is payable to order, though by him accepted, if the same, or another of the same tenor, is not endorsed as
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it should be, and shown to him, no, not upon the order of him, whom the Remitter or Endorser hath so impowered, till the very last respit hour, and not then neither, but upon the delivery and surrender of his accepted Bill.

X. When the Possessor of a Bill, made payable to him directly in *Banca*, cannot find or hath lost the Bill, then there is little or no danger to either Party, for there Bills are paid or writ of, without the demanding or delivery of the Bills to the Acceptants: But if the Bills are payable *per Cash*, or in current Moneys, then a prudent Acceptant will not pay a Farthing till the last hour of Respit, if his accepted Bill be not presented, and then only to the Possessor himself, or to his order, and upon his or their Security from further damage.

XI. When any hath lost his accepted Bill, payable to order, the *secunda* whereof unaccepted is orderly endorsed till it come to him to whom its payable; when he presents the said Bill on the day of payment, the Acceptant is obliged to pay the same upon Security given, either to deliver up the accepted Bill, or to indemnifie the Acceptant, and to discharge from all future demands of the said Sum.

XII. When any misleth his accepted Bill, whether directly payable to the Possessor, or to his order, and the Possessor thereof pretends to have lost it; or if the Possessor hath advice, that his Remitter hath remitted him at sight, *such and such a Sum, in such and such a Bill, &c.* and when he opens his Letter, he finds no such Bills; or if he receives not the Letter, wherein the Bill was inclosed, but hath advice thereof by the next Post, and finds that the Day of Payment draws near, then he may demand Payment upon his Letter of advice, offering Security to the Acceptant, to free and discharge him from all future demands of that Sum, upon the account of that lost Bill; and if the Acceptant will not then pay it, then he can assign the Value upon him, and if he pay not then, he may protest for Rechange and Charges.

XIII. When an accepted Bill, protested for Non-payment, is lost, then the Drawer is not obliged to make good the Rechange and Charges, unless he get sufficient Security, to indemnify him, and free him from all future Demands, with promise to restore the Sum with the Interest, that the Drawer paid for the Rechange and Charges, in case it be made appear that the Bill pretended to be lost, should afterwards be paid by

by the Acceptant, or any other *supra* Protest.

XIV. When an accepted Bill is lost, or cannot be found, then the Remitter or the Possessor cannot proceed against the Acceptant by present Execution, nor against the Drawer, but they must make use of the ordinary Means and Methods, as if it were some other kind of Debt; for a Protest cannot be made but upon an accepted Bill.

XV. The Security for discharge of those that pay accepted, but lost Bills, should be limited to a certain time, after the expiration whereof the Security should be vacated.

XVI. *Marius* adviseth, that so soon as the Bill is known to be lost to the party that had it, that he go instantly to the Acceptant, with a couple of Witnesses and a Notary, to signify the same to him, and to charge him at his Peril, to pay it to none but those he shall order.

XVII. And further he adviseth, that no man that hath accepted a Bill should refuse Payment thereof, because the Bill it self is not to be found, for those are but flimsy and sandy Foundations: But he asserts, that Protest being made for Non-payment, upon the

offer of sufficient Security to save him harmless, he, the Acceptant, as the wilfull occasioner thereof, is obliged to make good all the loss, Rechange and Charges.

XVIII. Suppose the *prima* accepted lost Bill was made payable to him that lost it, and the *secunda* unaccepted Bill, should be made payable to another man, then the Monies being really paid at the time, to him to whom the *prima* accepted, but lost Bill, was payable; this Payment is good and warrantable, and the Possessor of the *secunda* Bill, hath nothing to say to the Acceptant.

XIX. Suppose the *prima* accepted Bill should be found by a Stranger, who demands the Money in the Name of the party to whom payable, or that the true Possessor should have assigned it over to another man, and taken up the Value, yet this all signifieth nothing, coming after the time, and the Money being paid to him to whom it was payable (though without the accepted Bill) and he having good Security to be saved harmless: But he that is guilty of the Fraud may come to smart for it.

XX. In case a Bill of Exchange be lost by the Acceptant, with whom it was left to be accepted, or that he hath given the Bill to a
wrong

wrong party, or if in any case the party that left the Bill for acceptance, cannot have his Bill again, neither accepted nor unaccepted. In this case the party that lost the Bill, must give a Note under his Hand and Seal for the payment of the Moneys at the day, to the party to whom it was payable, or to his order, upon the delivery of the *second* Bill, if it come in time, or upon that Note, if it come not in time, which Note is in all cases to have the Law and Priviledge of a Bill of Exchange; if the Acceptant refuse this, Protest must instantly be made for Non-acceptance, and then again at the time the Possessor, though he hath neither Note nor Bill, must demand the Moneys, and if not paid, protest for Non-payment.

X X I. He further adviseth all Merchants, to keep Letter-Cases, or Paper-Books in their Pockets, to keep Bills of Exchange in, that they may be the better secured from losing.

CHAP. XLI.

*Of Letters of Credit.**Rule I.*

IN this Chapter we must follow the famous *Marine* his advice, the *Hollands* Author; not taking any notice of Letters of Credit in his whole Book, which makes up so material a part of the Mystery of Exchanges.

II. Merchants make special use of all their Letters, and do not only safely keep all they receive, but Copy also all the Letters they send away; and above all things, Letters of Credit ought to be safely kept by the Receiver, and fairly copied out by the Writer.

III. Merchants Letters are of several sorts, and accordingly have several Denominations; as, there are Letters of Commission, which are properly orders to Buy or Sell, to Freight and Ship, &c. 2^{dly}, There are Letters of advice, which concern Bills of Exchange, whereof we have treated in one Chapter before. 3^{dly}, Letters of Freight, which may be either Charter

ter-parties, or Bills of Lading, &c. And ^{also} there are Letters of Credit, which are properly such, which are written to our Friend, Factor or Correspondent, to furnish Monyes to a third Person upon Exchange, upon the Credit of the Writer of the Letter.

IV. These Letters of Credit are of great Concernment, and do as much oblige the Parties that subscribe them, as accepted Bills of Exchange do, in case he to whom they are writ, upon the Credit of the Subscribers, shall comply therewith; and the Honour and Credit of the Subscribers is as much concerned therein, as in Bills of Exchange.

V. It will not be necessary to caution Merchants to be careful and circumspect, in furnishing any with Letters of Credit, and to advise them to give none but upon good Security.

VI. Letters of Credit are of two sorts; the one is General, the other Special.

VII. The General Letter is, when an open Letter is given to any, directed to all Merchants and others, to furnish Monyes unto such and such Person or Persons, upon that Letter of Credit, whereby the Subscri-

ber doth oblige himself, that what Moneys shall be by them delivered unto the said Party or Parties, therein mentioned within such and such a limitted Time, at such and such a Course (or at the Course currant) to be acceptable and answerable for the same, to be repaid according to the Bill or Bills of Exchange, which upon Receipt of the Moneys so furnished, upon such a general Letter of Credit, shall be delivered for the same.

VIII. If any Moneys be furnished upon such a general Letter of Credit and Bills of Exchange, directed to the Subscriber, be presented, the Subscriber is by virtue thereof obliged to accept, and in case he refuse, he may be compelled thereto, and to pay at the day, by attaching of his Goods, and arresting of his Person, and that more then the Drawer, in regard the Remitter, in giving his Moneys to the Drawer, had not such respect to the ability and sufficiency of the Drawer, as to the Credit and Repute of the Subscriber of the Letter of Credit, who is in this respect, reputed as the Drawer himself.

IX. Wherefore its very dangerous to give such Letters of Credit, that are general and unlimited to any but those that are of our intimate and real Acquaintance; and also

also its very dangerous for any to give Moneys upon such a Letter of Credit, in regard the Drawer may prove Knavish, and take up more Moneys than the Subscribers are able to pay, so that both the givers of Moneys may come to loss, and the Subscriber be utterly ruined in a moment, both in his Estate and Credit.

X. The Special Letter of Credit, is, when a Merchant gives to any other man his open Letter, directed to his Factor, Servant, or Correspondent only, ordering him to furnish such and such a Person or Persons with such and such a limited sum of Moneys, at one or more times, and to charge his Account therewith, and to take Bills of Exchange or Receipts for the same.

XI. To prevent Frauds, and the jealousy the Factor or Correspondent, to whom such a special and perticular Letter of Credit is directed, may have concerning the Truth and Reality of this Letter of Credit its expedient, that the Merchant that gives it subscribe it with his own Hand, and affix his usual Seal; and not this only, but also, that he advise thereof by Post once or twice, and insert in the same something or other, that may be as a particular token of the certainty thereof, at least the Date of the last Letter
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he writ, and of the last Letter he received, with some of the Contents thereof.

XII. General Letters of Credit being seldom given to any, by any Merchant, but upon design of better carrying on his own trade, the Monyes taken up being imployed for his own use, and improved for his own advantage, therefore he never takes any Security from the Merchant he so credits, &c. But he that gives to another a perticular Letter of Credit, for whose Use and Service the Monyes is to be imployed, he ought, if he be prudent, to have good Security for repayment of all such Moneys as shall be received by vertue of the said Letter of Credit, before he do subscribe and deliver the same.

XIII. For the Merchant stands sufficiently bound and obliged to his Correspondent, by his Letter of Credit, and therefore its but reasonable, that he that receives the Letter of Credit should give a sufficient Counter-security.

XIV. There is no difficulty in the form of either the General or Perticular Letter of Credit, wherefore it will be needless to insert one, nor in the forms of the Bills of Exchange grounded upon this Letter of Credit, wherefore they are here omitted.

CHAP. XLII.

*Of what is, and is not to be done ;
or what Party concerned in an Ex-
change is, and is not obliged to do,
in case any that are concerned there-
in should fail.*

Rule I.

When a Remitter fails before he pay
the Value, and the Bill be by him
drawn in and endorsed, or sent away and
accepted, the Acceptant is notwithstanding
obliged to pay it at the time, though the
Drawer hath not received his Monyes. But
in regard, on this manner a knavish Remit-
ter and a cunning Possessor understanding
one anothers designs, may commit great
Frauds, its necessary that the Possessor prove
that he or his Correspondent have effectually
paid the Value, or that the same is remitted
to him by the Remitter for a just and true
Debt he had to demand of him. NB,
Wherefore let the Drawer never part with
both the Bills, till he hath received his Mo-
nyes.

I I. When the Acceptant of a Bill, the Value whereof was not paid to the Drawer, does at the day of payment refuse to pay, or is insolvent, then the Possessor may seek redress by the Drawer, and he is obliged to pay the Re-change, even of that Bill whereof he never received the Value (And *NB*, by *Re-change* here and else-where, is meant, the whole Bill which is advanced with the Re-change, Provisions and Charges, &c. must be paid) and not the bare Re-change only, which is the Monyes that exceeds the Value of the first Bill; and this is indeed a very hard Lesson, but yet must be submitted to.

III. Yea, if in such a case the Drawer hath drawn for his own account, and to prevent the loss by Re-change hath remitted the Value to his Correspondent, to discharge his Bill, or hath ordered his Acceptant to re-value upon him, whose Re-draughts he hath accepted; and the Acceptant yet for all this, instead of paying his Bill, runs away with his Monyes, or is insolvent and cannot pay, so that the Bill returns with Protest; yet notwithstanding this, the Drawer is obliged to re-pay the Re-change and Charges, and so

so twice to supply the Value of that Bill whereof he received no Value at all.

I V. When a Remitter falls before he pay the Value, and the Acceptant get notice thereof before he accept, and therefore refuseth to accept, so that the Bill returns with Protest, yet the Drawer is obliged to pay the Re-change, if the Possessor can prove that he negotiated the said Bill, and paid the Value for it; but if the Bill be made directly payable to any Person, and the Remitter sends him the Bill in payment of what he is indebted to the Possessor, then its a great question whether the Drawer be obliged or not, if he hath received no Value, nor the Possessor any otherwise hath made good the Value.

V. And though a Drawer in such a case must pay more than the Remitter is indebted to him for the Value (*viz.* the Re-change and Charges) yet the said Remitter is Debtor for no more than the bare Value, nor can any more be demanded of him.

V I. When a Drawer for another account receives not the Value, then the loss comes charged on the account of him for whose account it was drawn, unless the Drawer stood *del Credere*, seeing the *del Credere* hath respect to the Remises, and the whole Negotiation,

negotiation; or, unless the Drawer gave the Remitter some time for the payment of the Value, and advised not his Principal thereof, or unless the Drawer had neglected to demand the Value in due and ordinary time, or unless (I may add) the Remitter were a man known to be insolvent or declining; in any of these respects, whether the Drawer had any profit or no, the loss will fall upon his own account, because he credited the Remitter.

VII. When the Drawer fails before the Value be received, then the Remitter, if he hath the Bills yet in his hands, may restore them either to the Creditors of the Drawer, or to the Curators of his Effects, and if either of these think that he is obliged to perform the Contract, and that he must pay the Value, and demand Acceptance and Payment of the Bills, the Remitter is obliged to accept the same, but with this Proviso, that the Creditors or Curators that urge him thereto, give sufficient security for the Rechange and Charges, in case he negotiate the same, and it be returned with Protest, which they must do before he is obliged to pay the Value to any of them.

VIII. If a Remitter hath conditioned for any time for the payment of the Value,

or

or if he cannot pay the Value, the Bank being shut, and in the mean time, at the request of the Drawer, he accepts of an Assignment for the Value, payable to a third Person after the expiration of the Term agreed on, or after the opening of the Bank, (whether this Acceptance be verbal only, or written) the Remitter is obliged thereby to pay the Value to the third Person at the due time, although the Drawer should fail before that time be expired, &c.

IX. If the Remitter or Possessor of a Bill have been negligent in demanding Acceptance, and the Drawer in the mean time fails, but the Acceptant not knowing thereof before acceptance is demanded, if he do accept, that Acceptance obligeth to the payment, though procured after the failure of the Drawer, as well in respect of the Acceptant himself, or any other for whose account the Bill was drawn.

X. If the Remitter or Possessor have neglected to demand Acceptance before the Drawer failed, then the Acceptant cannot be compelled to accept of the Draught, though the Acceptant hath writ to the Drawer, that he would accept such a Bill, and though he confess, he should have accepted it if the acceptance had been timely demanded

manded, and before he had knowledge of the Drawers failure.

XI. When any have Bills sent them to demand acceptance thereof, and to keep the same by him, or to return them to the Remitter, or any other that he shall order, if they by negligence or forgetfulness delay to demand acceptance, or suffer the Acceptant to delay and defer the acceptance, and the Drawer in the interim should chance to fail, and then the Acceptant should absolutely refuse acceptance, such a one deserves small thanks from the true Owner of the Bill; but he is not obliged to make good the Value. But on the contrary, if Bills be effectually remitted to any, and they be urged to procure acceptance and payment, &c. if they defer and delay to procure the same, if the Acceptant (being yet ignorant of the fear'd evil circumstances of the Drawer) declare he should have accepted, if it had been timely demanded, they are obliged to their Correspondent who remitted the Bill, to make good the loss occasioned by their negligence, but further not.

XII. When a Bill is drawn in and endorsed by several Persons before the same be accepted, and afterwards acceptance being demanded, is refused, because the Drawer

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is fail'd, then the loss falls upon the first Endorser, whose duty it was to have procured Acceptance, wherein being negligent, he can only blame himself for having no better security, and must hope then on his fail'd Drawers recovery.

XIII. When an Acceptant hears of the failure of the Drawer before acceptance be demanded, he ought not to accept any Bills of his, though he had advice from the Drawer, that he would draw; and while he was yet supposed to be in *bonis*, and returned answer, that he would accept, in such a case he must upon no account to pleasure the Possessor, or any other, accept thereof, without sufficient security to be discharged from all and every one that shall make any pretence or demand thereof; whether the Drawer, his Creditors or Curators, or his Principal for whose account it was drawn.

XIV. Nor may the Acceptant accept any Bills from the failed Drawer, though the date of the Bill be before his failure, and the Letter of advice of the same date with the Bill, whether it come with the ordinary Post or not, because there is great suspicion (and its but too apparent in this case) that there is some Fraudulent under-hand-dealing, and
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that the Bill and the Letter are truly antedated.

X V. If any be drawn on for the account of a third, and he before the acceptance hath advice of the failure of the Drawer, he ought not to accept the same, though he promised to the Drawer that he would, because such his acceptance may tend to his own Prejudice, if he hath not effects in his Hands for the Person for whose account will scruple, and justly, the making good of the Value; and it will be at least to the Principals damage and Prejudice, if he hath the effects in his Hands to answer to those Bills.

X V I. Especially he ought not to accept any Bills, if the Person for whose account the Bill was drawn by the failed Drawer, hath advised him of the failure (or suspicion of the said Drawers failure) and therefore hath forbidden him to accept any of the said Drawers Bills for his account, though he had ordered the Acceptance thereof before.

X V I I. When the Drawer fails, the Acceptant is not obliged to make present Payment, or to give him better Security; but the Possessor must wait till the day of Payment before he can demand any thing of the

the Acceptant, and then the Acceptant must pay, though he accepted for the Drawers account, and he hath no effects of the Drawers in his Hands.

XVIII. The Possessor of a Bill, the Drawer whereof is fail'd, and payment being denied by the Acceptant, is not obliged to return the Bill and Protest to the place whence it was drawn, because its too apparent that the Rechange and Charges cannot be recovered from the Drawer, but he must instantly without delay, after the Protest is made, proceed against him, by attaching of his Goods and arresting of his Person, which no Magistrate should refuse to grant; and its to be noted, that its one thing when the Drawer is yet in *bonis*, and another when he is fail'd.

XIX. When an Acceptant fails, and absents himself, then the Possessor is obliged, so soon as he gets notice thereof, though before the day of Payment, instantly without delay to inquire the truth thereof, and if true, by a Notary publick order a Protest in due form to be made, and send the same with the Bill to the Remitter, to procure satisfaction from the Drawer, and advice ought to be given directly to the first Remitter, and not to the last Endorser only, that the

Drawer may, if he please, order another to honour his Bills, and prevent the loss by the Rechange, &c.

XX. But yet though the Possessor, either out of Negligence or Ignorance of this Custom, or Ignorance of the failure of the Acceptant, or because the Bill made payable to order, comes not till after its fallen due, or for any other cause does not, or cannot, make this Notarial Protest, nor send it away, neither before nor after its due, till probably on the last Respit day; yet this Negligence or Ignorance, notwithstanding the Possessor doth not lose his Redress on the Drawer and Endorser, though the Acceptant fail'd before the Bill became due.

XXI. When an Acceptant fails before the day of Payment, and the Possessor doth order presently a Protest to be made, then if the Bill be made payable to order, he doth wisely if he send only the Protest away to the first Remitter, and keeps the Bill till the same fall due, that in case the Drawer order any other to honour his Bills in time, the Possessor may be ready to receive the Value.

XXII. If any other offer to accept and honour the Bill, whose first Acceptant fail'd, in honour of the Drawer, or any other Endorser,

order, in such case the Possessor is not obliged to accept of such an offer, if he look not on the offerer as very sufficient and substantial; but if he be sufficient, or will give sufficient caution, then the Possessor must accept of his offer, and cannot refuse it.

XXIII. But none can or may accept such a Bill (whose Acceptant is fail'd) safely, without a Protest for Non-payment, declaring the Evil circumstances of the Acceptant; and such an Acceptant in honour must presently send the said Protest, together with the Notaries Attestation of his acceptance in honour to the Drawer, or to him for whose account he accepted.

XXIV. Though it be certainly known, and the Drawer himself must confess, that the Acceptant of his Bill is failed, yet he is not obliged to give any caution, security or satisfaction to the Remitter till the Protest be produced; but if the Remitter or Possessor have the Bills returned without the Protest, or the Protest without the Bills, or both the Protest and the Bills, and shows them to the Drawer, then he is obliged instantly to give satisfaction or security for the Re-change and Charges.

XXV. Yet let no wise Drawer make re-
stitution

Restitution of the value he received, or of the Rechange and Charges upon the producing of the Protest for the insolvency of the Acceptant; but upon the producing thereof, being required thereto, let him give security for the payment thereof at the place where it is payable, if there be yet time enough, or of the Re-change, when the Bill by his failed Acceptant, accepted, is produced, which Bill, if it be not produced, he need not restore or repay any thing, but upon sufficient security to deliver the Bill, and to discharge him from all future demands, and to make Restitution thereof with Interest, in case the said Bill be paid to any *supra* Protest; but if there be not time enough to order the payment of the Bill at the place where it was payable, then let the Drawer give security to pay it to the Remitter in the place where it was drawn, when the time of the Bill shall be expired.

XXVI. A Drawer or Endorser is obliged to the Possessor of a Bill protested for the failing and insolvency of the Acceptant, as much as if the Bill was protested for Non-acceptance (whereof see *Ch. 13.*) & further not.

XXVII. When the Drawer, at the request of the Remitter, hath made his Bill payable to order, and that Bill is afterwards endorsed

endorsed and drawn in from several places, and should, in case of the failure of the Acceptant, be returned the same way they came, then the Drawer may tell the Remitter to whom he may address himself for payment at the day, giving sufficient security for the payment thereof, which if he do, he is not further obliged to any, nor for more than the Charges of Protest and Postage, and the Remitter must accept hereof, and accordingly order his Correspondent to make his address to such a Person; but the Drawer must order his Friend not to pay any Monyes but upon the receipt of, or security for the delivery of the protested Bill, with the Protest.

XXVIII. When any is drawn on and remitted to, in Bills payable to himself, and he hath advised that he accepts of the Draught, if this Acceptant and Possessor of the Bill should chance to fail before the Bill fall due, then the loss falls upon the Drawer, or on him for whose account the Bill was drawn, and he is obliged to make good the Re-change and Charges, though it be not protested in due form and course; but if he fail on the day of payment, or after, then the Bill is looked upon as paid, and the loss falls upon him for whose account was re-

mitted, though it should formally be protested within the dayes of Respit.

XXIX. When a Sum is drawn for the account of a third, and the Bill is for his account accepted, if he for whose account is drawn should fail, without making Provision to discharge the accepted Bill, yet the Acceptant must pay it, and hath no redress on the Drawer.

XXX. If a Bill be drawn by the order and for account of a third, and is accepted by the Acceptant, if the Acceptant fail, the Drawer must make good the Re-change and Charges, but yet he hath his redress on him for whose account he drew, and may charge his account therewith, though the said Person hath already made sufficient provision good to the Acceptant, or hath accepted his Acceptants Bills for the Value, and if both the Acceptant, and the Person for whose account was drawn, should fail, the Bill being accepted, the Drawer may then come upon them both for satisfaction.

XXXI. When a Bill drawn and accepted for the account of a third, and the Acceptant fails before he, for whose account the Bill was drawn, hath made the Acceptant sufficient
Provision

Provision for the discharge thereof, if the Drawer should also fail, then he for whose account was drawn need not suffer himself to be perswaded to pay the Bill, and receive it, because it was drawn for his account, unless the Possessor will give him sufficient security to save him harmless, both from the Drawer and Acceptant, and their Creditors, Assigns and Curators, &c.

XXXII. When the Acceptant of a Bill fails before Provision is made to discharge the same, and the Drawer fails also, then he for whose account was drawn and accepted, need not discharge the Bill and pay the value, either to the Acceptant, his Creditors or Curators, unless it appear to him that the Possessor is satisfied by the Acceptant, or some others for his account, and doth relinquish all pretences to both the Acceptants and Drawers effects, or unless he be sufficiently secured from all damage that may accrue upon the account of the said draught and acceptance.

XXXIII. When the Possessor of a Bill, payable to his order, fails, and to defraud his Creditors, endorseth the Bill to another, who negotiates the same, and effectually receives the Value, and doth again endorse it to a third, &c. yet though the Creditors should

should oppose it and discover the Fraud, the Acceptant must pay it to him who comes to receive it, if he can prove that he paid the Value thereof really; but if the failed Possessor had made it payable to any other directly, he may probably be allowed Provision, but he must prove how and when he paid the Value, and must Swear, that before the failure of the Endorser was known, the same Bill, without any Colour or Fraud, was delivered to him before he may receive the Principal; (if the Creditors oppose him) and if he refuse to do this, he must not receive a Farthing of the Sum, or if he hath received it, he must be obliged to restore it for the use of the Creditors in common, and must also be obliged to draw in and endorse the Bill that he received from the failed Possessor to defraud them.

X X X I V. When a Bill payable in current Monyes, is made or endorsed payable to any Possessor, that is unknown to the Acceptant failed, before the day of Payment, if he afterwards pay the same to him, his failing being unknown, such Payment is good and vaild; but if he pay to any other, upon order of the Possessor, and know of the failing of the said Possessor, he does very unwisely, and runs the hazard of paying it twice.

X X X V.

X X X V. When the Possessor of a Bill fails, and the Acceptant can prove and demonstrate that the Bill was remitted for the Possessors account, or upon account of what the Remitter or any other for whose account it was remitted, was indebted to the Possessor, and therefore he only is the true Owner and Principal of the Bill, then the Acceptant may pay it to him, and he must credit the Person for whose account it is for the value. But if the Bill be for the account of a third, or for the Drawers account, and neither of them have received any valuable consideration from the Possessor for it; in such a case it ought to be paid to him, in regard the failed Possessor is not the true Owner of the Bill, but only the demander of Satisfaction; and the Acceptant should be obliged at the day of Payment to pay the same to the next order of the Remitter, or the true Owner of the Bill for whose account it is.

X X X V I. If a suspected Possessor of a Bill should Fraudulently twice draw in effectually the same Bill, and give the *prima* Bill to one man, with directions to find the *secunda* Bill accepted, and the *secunda* Bill to another, with directions where to find the *prima* accepted, then he only hath right and title to the Monyes that first procures acceptance (he not finding

finding any accepted Bill, as he was directed) whether it be the first or second Bill that is accepted, it makes no matter, or whether it were first or last negotiated by the fraudulent Endorser.

XXXVII. When the Possessor of a Bill that is fail'd, to defraud his Creditors or others, conceals it, and they afterward discover that such a Remise must yet be in his Hands, or such a draught is, or at least was in his Hands, then the Acceptant is obliged to declare whether he hath accepted such a draught, to which if he answer affirmatively, the Creditors, or any other concerned, may forbid the Acceptant to pay it, without their or his knowledge and consent; and if any appear at the day of payment to demand payment, he is obliged to declare, that he is the true possessor of the said Bill, and prove it; if none appear, then the Acceptant is obliged to pay the Sum to the Creditors or Curators of the failed Possessor, they giving security that the Acceptant shall in no wise be prejudiced thereby, or if he scruple to do it upon their Security, he may pay it into the Hands of the Magistrate, for the account of the true Owners thereof; and if the Acceptant refuse this, the Creditors or Curators may unanimously protest against him for non-payment, and send the same to the Remitter

to procure satisfaction of the Drawer, and if he make no Satisfaction, then they may compel the Acceptant thereto.

XXXVIII. When a Bill is made payable to the order of any that is failed, before the Bill be come to his hands, if he receive the Bill and endorse it, making it payable to any other that demands acceptance thereof, and the Acceptant accepts thereof, being ignorant of the failing of the first Possessor, in such a case the Acceptant may, getting knowledge of the failing of the first Possessor, and that he was failed before he endorsed the said Bill, not pay the Value to his order, because the failed Possessor, after his failing, had no power or quality to endorse a Bill of Exchange, and therefore the Acceptant doth wisely to offer to make Payment thereof to his Creditors or Curators, upon sufficient Security to be indemnified, which if they accept not of, let him suffer the said Bill to return with Protest.

XXXIX. Its not without suspicion of Fraud when the Debtor of an insolvent pretends to have a Resconter, because that he at the request of the failed, when he was yet in *Bons*, accepted a Bill, or under-writ a *tertia* Bill, payable to some of the failed's Creditors, and that he paid the said Bill he accepted,

accepted, or that the Bill, the *tertia* whereof he subscribed, was protested, and he forced to pay the Rechange and Charges; for the Debtor and Creditor, or Possessor of such a Bill, understanding one another, and the condition of the failed may easily, to the prejudice of the Creditors, make abundance of such Bills after he failed.

X L. When a Possessor of a Bill hath neglected to procure acceptance in time, and the Acceptant after the failure of the Drawer refuseth to accept, then he hath no Privilege or Preference more than other Creditors, to the effects he may have in the Acceptants hands, though the Drawer drew merely upon those Goods, and would have been accepted, if demanded before the failure of the Drawer was known.

X L I. Though the Possessor of a Bill, whose Acceptant failed before the day of Payment, or within the Respit dayes, hath an open account with him, and is Debtor to him for a greater Sum than the value of the Bill imports; and though he may now upon the failing of the Acceptant resconter, yet he doth more wisely if he protest for Non-payment, and let the Bill return.

X L II. When the Drawer, or he for whose

whose account is drawn, fails before they have made good the promised Provision to the Acceptant, then the Acceptant paying at the time, or if not accepted, or not paid, but returned with Protest, the Drawer hath privilege and preference before all other Creditors, upon any of the effects of the failed that they have in their own Hands.

XLIII. When an Acceptant of a Bill hath Remises made to him for Provision, by him for whose account he accepted, to discharge the said Draughts with, if he having received the Remises, faileth before he discharge the draughts, then must the Principal answer the Rechange and Charges, and must be content to come into a *concursus creditorum* with the rest. But if upon the failing of the Acceptant, the Remises be yet found by him, and not yet received, then the Principal that made those Remises must be preferred to them, and they must be paid to his order; and though the Creditors or Curators have received the same after the Insolvency of the failed, yet they must repay the same again.

XLIV. The Possessor of a Bill, protested for Non-acceptance or Non-payment, whose Drawer and Acceptant are both failed, must concur with the rest of the Creditors, not for the Value only that was paid, but

but for the Rechange and Charges, and for the Sum that the Drawer or Acceptant should have paid, if they had been Solvent.

X L V. If both the Drawer and the Acceptant fail, then the Possessor hath right and title to demand payment of both their Goods and Debts, &c. and he may chuse with which he will first begin, and where he can soonest procure Payment or Satisfaction, and if ones Effects will not satisfie his Demands, he may then get as much as he can of the other's, for they are both obliged.

X L V I. And the same right that he hath to the Goods and Debts, or whatever else, either the failed Drawer or Acceptant may have, till he be satisfied, he hath also the like against any, or all the Endorsers, if the Bill be returned unaccepted, if they come to fail, and if the Bill be accepted, if the Acceptant, Drawer and Endorsers should all fail, and be Insolvent, then he may come upon all their Goods for satisfaction.

X L V I I. The Possessor may demand the full Sum, with all the Charges out of the Goods and Effects of that failed Acceptant, Drawer or Endorser, where he first gives himself on as Creditor, and what he receives there, he may place to account in part of his Demands,

Demands, and if not satisfied there, he cannot demand the whole again of another, but only the remainder, and so from one to another till he be satisfied fully.

X L V I I I. If the Possessor of a Bill, whose Acceptant, Drawer and Endorsers are all failed, receives something in part of satisfaction of his demands, if the failed or the Curators do thereupon demand an Acquittance with a Cession of the Action to him or them, then the Possessor must not acquit, nor transfer more of his Action to him or them, than for the value he hath received.

X L I X. When the Possessor hath received of one of the failed, in part satisfaction of his Demands, and comes to another of the failed to demand the rest, then he cannot make a Cession of his Action against him, from whom he had received in part satisfaction at first, because he was there admitted into the Concourse for his whole demand, and accordingly received his proportion. So that *NB.* though a Possessor enter into a concurrence with other Creditors, and take in part of his Debt of one of the failed as much as he can get, and thereupon doth absolutely discharge him; yet for the remainder he may come upon the other Endorsers or Drawers, till his Bill be fully satisfied, only

he cannot transfer or transport his Action against him whom he hath discharged.

L. When a Possessor of a Bill, whose Drawer, Acceptant and Endorsers are all failed, does first receive, in part of his demands, of one of the failed, for whose account the Bill was drawn, but hath either drawn, or endorsed, or accepted the Bill for anothers account, without having any effects in his hands, then the Possessor must enter with him, who paid him in part, into a concourse between themselves, and both demand of the others (or any one of them) that failed, the *subla summe*, with the Charges.

L^I. In case of the failing of Drawers, Acceptors or Endorsers of Bill, many difficult Questions could arise, whereof some of them are as follow.

1. Suppose either the Drawer or Acceptant should fail, and the other remains sufficient.

Queritur, Whether the Possessor, to pleasure him that is yet sufficient, may (being not requested thereto) by virtue of of the Bill, enter upon a concourse, or whether he must look to him only that is sufficient, and leave the other to take care for himself?

2. Suppose

2. Suppose the draught is for account of a third Person, and the Acceptant fails before Provision be made to discharge the accepted Bill, by him for whose account it was drawn and accepted; suppose also, the Bill being protested for Non-payment, the Drawer should prosecute the Acceptant, (or any other Possessor should do it) and at last they come to terms of agreement, and the Acceptant doth then accordingly satisfy the Possessor, whoever he be.

Queritur, What right of demand these either of them have one upon another, or either or both of them, upon him for whose account the Bill was drawn?

3. Suppose the Possessor of a Bill hath negotiated to protest within the days of Respite, and the Acceptant should fail, without having Effects in Hands for whose account he accepted.

Queritur, Whether the Possessor may agree with him, for whose account the Bill was drawn, and so mortifie the Draught; or whether he, for whose account it was, must fully satisfy the Acceptant, and the Possessor must be content to engage in a course with the Acceptants Creditors?

4. Suppose a Merchant hath no other

Debts at all, but one only Bill of Exchange by him drawn for his own account, whose Acceptant failing, he also is forced to absent.

Quæritur, Whether the Possessor may seize upon all the Effects of the Drawer, upon account in part, and for the remainder may be admitted as a Creditor, into a concurrence of the Acceptants Creditors?

5. Supposed, in case of the failure of Acceptant, Drawer and Endorsers, the Possessor should first make his demands of the full Sum of him who is the true Debtor, and ought to pay, and the remainder should be demanded (part being there satisfied) of the Endorsers, or any other concerned in the Bill, that have only drawn, endorsed or accepted for anothers account.

Quæritur, Whether in such a case (this last demand being also satisfied) they that pay to the Possessor the remainder, may come upon the Person who ought to pay, for so much as they have paid to him?

6. Suppose that any Merchant should fail, that hath three Creditors only, one demands 600 l. Ster. for Goods sold, another as much for a Bill of Exchange, drawn by him for his account, whose Acceptant failed, and a third as much, upon an Obligation, Bond or Bill, for so much Monyes deposited, having no
other

other Security but his bare Bond. But though there be so much Debt, yet the failed Debtor hath no more Effects then 600 *l. Ster.* in all.

Quæritur, 1. Whether this Sum of 600 *l.* must equally be divided among these three Creditors or not?

7. Suppose again this being done, the Possessor of the Bill should come upon the Acceptant for the remaining 400 *l. Sterling*, and should there be forced to enter with other Creditors upon a Concourse.

Quæritur, 2. Whether then the said Acceptant may not pretend, that he paying so much on the foresaid failed's account, and so becoming his Creditor, that another division of the foresaid 600 *l.* ought to be made, and he to have part thereof, the same may be enquired after, in case the Possessor of the Bond, &c. had any Security, and he forced then to pay the remainder, whether he ought not to admit them as Creditors to the 600 *l. Sterling*?

8. Suppose that Drawer, Acceptant and Endorser are all fail'd, and have given their Goods and Effects into the Magistrates, or any Curators Hands, and the Possessor should in one place give himself on for the full Sum, and receives there something in part, and so

also in another place receives something more ; and after some time be expired, more of their Debts being come in, the Magistrates or Curators should make a second Division.

Queritur, Whether the Possessor of the Bill, at this second Division, must come in for a proportion, according to his respective Sums he formerly received, or for what Sum he must be admitted ?

9. Suppose that Bills of Exchange are running betwixt two, or more, that are failed, for one anothers account reciprocally, and neither of them have open accounts for one another, neither accounts currant, nor upon time, and yet both have Goods unfold in their hands.

Queritur, How then the Composition must be made, and whether what the one hath to debit the other for must be adjusted ?

10. If the Possessor of a Bill fail before or after the Bill is due, and the Acceptant hath yet in hands, or sees and knows where to get another accepted Bill, payable by the Possessor, or a protested Bill for Non-acceptance, drawn by the Possessor, which will fall due before or soon after the Bill the failed Possessor had payable by the Acceptant,
etc.

Queritur,

Quæritur, Whether in any, or all, or none of these Cases, and in which Rescounter or Discount hath place?

LII. Merchants that fail, not on design to defraud their Creditors, or to enrich themselves by their losses, neither occasion their own failing by their negligence, or Riotous living, but have lost their Estates by cross Providential Dispensations immediately, as by Fire, Water, Shipwracks, Wars, Pyracies, &c. or mediately by the Knaveries of Wicked Correspondents and Factors, &c. are greatly to be pitied. and not to be persecuted with the Rigor of the Law. But those that are Knavish, or have spent their own and others Estates in profligate and debauched living, deserve to suffer the utmost Extremity of the Law, as Thieves and Robbers.
Scaccia.

LIII. Honest Merchants that fail, will judge themselves in Conscience obliged to make their Creditors satisfaction, *Quando ad pinguorem fortunam pervenerint*, and will use all endeavours to do it, though they have compounded with their Creditors, and the Creditors have for part received, wholly discharged them, and this is the Testimony of their honesty, when they will pay, though the Laws of the Land cannot compel them.
Scaccia. X 4 LIV.

LIV. *Decoetus* says, The Law *Est quasi Mortuus*, which may be applied to many cases, in respect of Exchange, and what a Possessor or Remitter are obliged to do, if the Acceptant or Drawer fail, the same they are obliged to do if they dye, if they procure not Payment. *Scaccia.*

LV. If the Possessor of a Bill dye, and there are none that can lawfully receive Monyes, nor give a satisfactory Discharge, and yet some should appear as Heirs, or Assigns, or Excecutors to enter a Protest of Non-payment, then the Acceptant must advise the Drawer of all the Circumstances, and he must consult with the Remitter, and give further orders, or he may deposit the Sum in the hands of the Magistrates, to be reserved by them for the true Owner. *Scaccia.*

LVI. If the Possessor of a Bill protested, should agree and compound with the Acceptant, and the Drawer be the Acceptants Debtor for the Sum he accepted, though the Drawer be thereby discharged from the Remitter and Possessor, and that Acceptant also, yet the Acceptant can debit the Drawer for no more of that Bill or Bills than he effectually paid, according to the Composition. *Scaccia.*

LVII.

L V I I. But if the Possessor hath made this Composition with the Acceptant, without the Remitters order and consent, the Remise being for the Remitters account, then the Possessor will be liable to answer the whole Sum to him. *Scaccia.*

L V I I I. If the Drawers or Endorsers being failed, deny that the Bills they have drawn and endorsed, and the Acceptant hath accepted, were for effects of theirs, that the Acceptant had in his hands, or that they have since or before acceptance made him provision for the discharge thereof, they must at their Creditors request prove the same. *Scaccia.*

CHAP. XLIII.

I N this Chapter shall be added some select Cases collected out *Sigism. Scaccia.* his Treatise *De Camvio & Commercijs.* 2

Glassemā Primum.

Case 1. **V** *Hether it be necessary that Bills of Exchange be made?*

Answ. Affirmatively; but not because they are *de Essentiâ Contractus*, but only in respect of better Proof of the Contract, and that Execution may more easily be obtained upon them; Therefore, *Regulariter*, they are necessary.

Case 2. *Whether ought the Remitter to give the Monyes to the Drawer, or the Drawer give the Bills to the Remitter first, de jure?*

Answ. The Remitter, who is as the Buyer, must give his Monyes first; for Good bought for ready Monyes, need not be delivered till the Monyes be paid. 2dly, The Bill sayes expressly [*The value received*] and there is danger to the Drawer to give his Bills away before the value be received. But, 3dly, Rather than there should among Merchants be any dispute about this, let the Drawer give the *prima* Bill to the Remitter first, and keep the *secunda* Bill till he receive his Monyes.

Case 3. *Whether it be necessary to begin a Bill of Exchange (or any other publick or private*

gate Instrument) with *Laus Deo, or Signum Crucis*, as the Papists usually do?

Ans. No; for it is but a superstition, which the Law takes no notice of, neither is it of the Essence or Substance of a Bill of Exchange, or other Instrument; and though it be used by many, and the *Italians*, as the Author, and others that he quotes, assert the necessity thereof, as grounded upon Custom, and as a Note of Distinction betwixt *Christians* and *Heathens*, yet its certain, as the Author confesseth, no stress was ever laid upon it; and I am bold to add, *That it is Superstitious, and more a Prophaning than an Invoking of the Name of God.*

Case 4. *Whether is the Date of a Bill of absolute necessity, so that without it the Bill is void and of no effect, and here first, whether the Year must be specified?*

Ans. 1. Its not so absolutely necessary *de jure*, but its yet *de consuetudine* (that hath obtained the force of Law) absolutely necessary; so that the Omission thereof doth vitiate a Bill of Exchange; besides, in Bills of Exchange time is *de Substantia Contractus*.

And 2dly, *Whether the day of the Month must be exprest?*

The Answer is still the same; for how should Usance be reckoned, if this be omitted, if Usance be after Date, &c? And if the

the Bills shall prove for the Drawer, in his favour the true date must be added, otherwise though the Possessor should not protest his Bill in time, and the Remitter come and desire restitution upon that Protest, if the Acceptant was the Drawers Debtor, and failed, or in any such like case, the Drawer may thank himself, if the Date were omitted, it will prove against him, not for him, nor can he on this account refuse to make Restitution. Nor can the Acceptant upon this account, by the same reason, refuse acceptance and payment, but such Bills may as effectually be protested as if they were dated. Nor can the Notary Publick upon this pretext refuse to make a Protest, and the reason is this, The date of the Bill is not *de jure*, so Essential, that the Omission thereof should make it utterly void ; for the Body of the Bill will prove the Contract against the Drawer, and against all else concerned in it, in favour of the Remitter and Creditor.

And yet, if the Acceptant refuse to accept an undated Bill, he doth well, and cannot be prejudiced, yet may safely accept it, if he please, without any fear of Prejudice to him ; for all the fault is the Drawers : And if the Possessor refuse to protest such Bills, the fault is his, and he may make himself thereby lyable to make satisfaction to the Remitter, if any Damage should ensue.

Case 5. *Whether the Place must necessarily be added in the Date of a Bill of Exchange?*

Ans. In the Affirmative, *de Consuetudine, non de jure*, Its not enough to know that such a Bill was done in the *World*, or in *England, Scotland, France or Ireland*, but at least the Name of the City where such a Bill was made must be exprest; and as he is unwise that will accept a Bill of Exchange any way deficient in these Circumstances of Time or Place, so also is that Possessor unwise, that because the Bill is deficient, will not protest upon refusal of Acceptance.

To this let be added, That if the Acceptant doth accept a Bill, and doth not then observe it to be deficient in any of these Circumstances, and afterwards will make such Exceptions to avoid the payment thereof, he cannot thereby be excused, but must pay.

Case 6. *Suppose that this day, the 1st of November, Anno 1680. at Konigsbrough in Pressia, I writ Letters to Hambrough to Robert my Correspondent there, advising him, that I have drawn on him, of the same date, such and such Bills, &c. Suppose also, that instead of dating them the 1st of Novembris aforesaid, they be dated the 1st Octobris past, or the 1st Decembris to come. These Letters and Bills they*

they arrive at Hambrough by the Post the 11th Novembris, on which day the Letter of Advice is delivered, and the Bills for Acceptance presented; The Acceptant he presently observes the Error, and begins to scruple Acceptance; if he doth accept, he knows not how to place them to account in his Books, because the Dates, which should be orderly, and one Day and Moneth follow upon another in his Books, and it may be he suspects there is some piece of Policy (or Knavery rather) in the case, and either the anti-dated Bills should not be paid at all, (suppose they were at sight) till the 1st Decembris, or the Post-dated Bills (suppose the term of Payment be expired) should not be accepted at all; in these Perplexities of Thoughts he states and fears in the whole, the Design is to trapan him, especially if he hath engaged himself under a Penalty to accept all the Bills of such and such a Person, for some limited Time and Sums. What shall and must Robert, my Correspondent, do in such a case?

Ans^r. Robert not only may, but must accept and pay those Bills, though no Penalty were annexed. For, First, This pretext of an Error in the date will not excuse me (the Drawer) from paying the Rechange and Charges, if protested, much less my Correspondent, who must observe my order, and represents my Person, and that this pretence

tence will not excuse me, is self-evident, because in respect of me, Time and Place are not of the Essence of the Bill, by an Error, or the Omission whereof, the Bill it self should be so vitiated as to be null and void. *Secondly*, Suppose an Error in, or Omission of these Circumstances of Time and Place were of the Essence of the Bill of Exchange, yet though the Bill be deficient and vitiated, yet the Contract contained in the Bill is valid and firm. And, *Thirdly*, In such a case where an Error is so evident and palpable, respect should be had to the Letters of advice, and if they were also wrong dated, yet being its impossible that Letters dated at *Konigsbrough* the 13th *Decembris* should arrive at *Hambrough* (an hundred *Dutch* Miles off and more) three Weeks before the time of the date. Thus palpable Error must give way to Truth, especially seeing the Error is not in the solemnity of the Contract, but in the formality of the Bill; and these Circumstances are only added as Proofs of the Contract, not as Parties, and of the Essence thereof.

Case 7. *Whether an Error about, or an Omission of the Name of the Place be Essentially necessary to be expressd in a Bill of Exchange?*

Ans. To avoid Repititions, I refer my self to what hath been said concerning an Error

Error in, or Omission of the time of the date of a Bill.

Case 3. *If the Sum exprest in Figures, and the Sum writ at large in Letters disagree?*

Answ. Refer'd to what was before hinted; Chapter 7. Rule 26.

Glossema Secundum.

At Usance.

VWhat Usance is, and what other times of payment are usually exprest in Bills, and all other Questions and Cases concerning them, we refer to what hath already been said in the 14th Chapter fore-going.

Glossema tertium.

Here must be promised Pay.

That Pay, is here *modi imperative & temporis presentis*, & accordingly hath various Effects: 1st, That Bills of Exchange are positive and peremptory, the Order is absolute and cannot be revoked: 2dly, That
the

the Payment at the time appointed must necessarily be made, and if accepted, cannot be avoided: Wherefore, 3^{dly}, Its not according to the Merchant Stile, to say in a Bill of Exchange [*Please to Pay*] the Stile of Exchanges will not allow of such Completments; not from a Servant to a Master: 4^{thly}, This word [*Pay*] commands Acceptance first, in order to Payment, as well as Payment it self.

Concerning Acceptance, which preceeds Payment alwayes, we have spoken something before, Chap. 10, 11, and 12. and probably shall have occasion to hint something else afterwards; wherefore we proceed to speak to several Cases concerning the Payment of Bills.

Case 1. *What is it to pay a Bill of Exchange?*

Answer; To satisfy the Bill, and procure a discharge upon it, that the Acceptant and the Drawer may be discharged from the Remitter and Possessor; so that to *Pay*, is rather to be referred to the substance of the Obligation, than to the payment of Monyes; and if the Bill be satisfied, its no matter at all whether with Monyes or Goods, or by Resconter, &c. though ordinarily all Bills are paid in Monyes: and this is certain, that if the Bill be for Monyes, it must be paid in Monyes, if the Possessor will have it so; and

a Possessor may as well protest for Non-payment, if Goods be offered instead of Monyes, or any other Species of Monyes than that the Bill requires, (as to pay *per Cash* when the Bill is payable in Bank) as if no Payment at all were offered.

Case 2. How many sorts of Payments are there? And to whom is the Debtor said to have paid well, and to whom not?

Answer; There are two sorts of Payment, *Proper* and *Improper*; *Proper* is when the Bills are paid in the precise Species, and according to the tenor of the Bill, either in Gold or Silver, in Bank or *per Cash*, in currant lawful Monyes, and such Species as the Bill requires; and such Payment as this doth absolutely discharge the Debtor, because the Obligation is fully satisfied, and the Creditor need not be much inquisitive, who pays his Bill in this kind, whether it be the Debtor himself; or 2^{dly}, any other by his order, and in his Name; or 3^{dly}, without his order, *supra Protest*, in honour of the Bill; or 4^{thly}, without either Order or Protest (if any be so foolish) the Creditor may from any of these safely receive his Monyes, and transfer his Action, if he please; 5^{thly}, yea, if any will pay against Order. But on the contrary:

To a full discharge of the Debtor, is required not only a surrender and delivery, and

and a Discharge or Acquittance upon the Bill, but he must observe to whom he pays, and Payment in respect of the Debtor is only good, when it is made, 1st, To one sufficiently authorized and qualified to receive and discharge as he is; 2^{dly}, To whom it is orderly last assigned and endorsed; or 3^{dly}, To him with whom the Contract was made (if there be no Endorsements) or 4^{thly}, To him for whose account the Bill is; or 5^{thly}, To a Servant of any of these, who hath ordinarily for his Master received Monyes, and given Receipts, whereof the Masters hath approved; or 6^{thly}, To the Executors or Administrators; or 7^{thly}, To any that the Remitter and the Drawer shall agree upon, in case they revoke their first Order, if the Bill be for the Remitters, or for any thirds accounts; for then, though it be orderly assigned and endorsed to another, who is only as the Remitters Factor, if the Remitter forbid the Acceptant to pay him, he must not pay, but upon his own hazard, but must pay to him whom the Remitter orders; concerning this, see Chap. 16.

To all which may be added, that if the Acceptant pay *mala fidei Possessori* ignorantly, that Payment is good, if the Bill otherwise in all its Formalities be perfect, &c.

Improper Payment hath all the Effects and Virtue of a *Proper* Payment, though it be

not made in a precise Species, nor according to the tenor of the Bill, yet it discharges the Debtor as effectually, only the Creditor cannot be compelled to take this, as he may be to take the other, and it must be made only to the true Owner of the Bill, to one that hath his order to accept of such payment, else it is not good nor sufficient, nor will the Debtor be thereby discharged, if the true Owners order hath only a simple order to receive Payment, and not positively such payment, because no order of the true Owner and Possessor of the Bill hath power to alter the tenor thereof; whereas if the true Owner resconter, (or order his Order so to do) or take payment in Goods, or otherwise in Words declare himself satisfied, or order him to satisfy any other for the Value, or to Resconter with any other; though there be in all this no actual payment of Monyes, in Specie, yet the Payment is good.

Case 3. A Possessor hath several Bills upon one Person, and they all fall due near upon one time, part he pays, and the other part he pays not till a day or two after, (yet within the Respite dayes) in the mean time he fails, and cannot pay at all; the Question is, for whose Accounts that shall be that is paid, or whether the Receiver hath power to place it to what Accounts he pleaseth?

Ans. 1.

Answ. 1. If the Debtor express and declare on what account he pays, if the Creditor or Receiver be silent, and so receive it, it must necessarily be for that account, yea, though there remain another Sum then due, for which the Drawer had given Security, and so it may seem to be paid in *prejudicium tertij*; yea, and though the Creditor had engaged not to act against the Surety, till he had first excused the principal Debtor; and as on one hand the Surety cannot justly complain of the principal Debtor for so doing, because it was in his power to do with his own as he pleased at that time, and so pay for what account he would; so neither can it on the other hand, in favour of the Surety, or of the Creditor, be altered, though the Debtor himself consent, because when once paid, it is no more the Debtors, nor hath he any further disposal over it, nor can it be said, that the payment was made to defraud the security, because the payment was Real, and upon a real account. But if the Creditor had acted at Law against the Debtor, and procured execution against him, and so had seized on his Effects, and exposed them to sale to pay himself, then the case is otherwise; for then the Debts, for which there are Sureties or Pledges given, must first be discharged, or else the Creditors do not as they would be done to.

2. If the Debtor be silent when the Creditor says, he receives for such and such accounts, then such payments must be for such accounts, because its presumed, that the Creditor herein acts as if he himself had been Debtor.

3. If one of them chuse, and the other in that moment contradict, the Debtors choice must be preferred, and if the Creditor will not receive for those accounts, he should not receive at all, or if received, he ought to make restitution, or place it to account, as the Debtor would have it.

4. If both be silent, as to the accounts the the Monyes is paid and received upon (or if they would defer it till another time to resolve upon, which cannot lawfully be admitted) then the oldest Debt must first be satisfied; and if they are alike old, then *causa Durioris*, must be preferred, because its most necessary, as if any Surety be engaged for the Debtor; in this case it would be very hard that he should suffer. Yet,

5. If the Debt be for Interest and Principal, and the Debtor pay any Monyes upon that account, though the Principal be heavier, yet the Law always supposeth that the Interest must first be paid, because men usually gather the Fruits before they pull up the Tree. So also,

6. If there be a Surety for one part of the Debt

Debt, and a Pledge for the other, though (neither in this nor the former case) the Debtor nor the Creditor speak not a word about it, or though they do speak, yet the Law presumes, that the Monyes paid is first to discharge that part for which there is security given, and not for that for which there is a Pledge, because the Creditor can sell the Pledge when he pleaseth, and so pay himself.

Case 4. Whether Prescription be good Payment? And how soon a Bill of Exchange may be prescribed?

Answ. Prescription is improper Payment; yet being it hath the effect of a Real Payment sometimes, we must therefore enquire, *How soon a Bill of Exchange may be prescribed?* And to this is answered, That accepted and duly protested Bills, or protested for Non-acceptance, can never be prescribed, if demands be constantly made; but if a palpable negligence or silence can be interpreted, for consent, and that out of such a Consent Prescription can arise, especially the Creditor knowing what the Law in these cases is, and having frequent opportunities to make demands, or to pursue at Law for Non-payment; or if such a consent imply a Renunciation, Remission or Satisfaction, then we cannot suppose that any long time is requi-

red to prescribe a Bill of Exchange; and the Law presumes, That when a Debt may conveniently be demanded, but is neither demanded nor protested, that then it is paid; and if it were not thus, there would be no end of Controversies and Disputes among Merchants; for they many times, when their Bills are paid, either negligently or in confidence of their Creditors honesty, leave them in their Creditors Hands: And here observe, That as to the ready Execution that Bills of Exchange are priviledged with, when protested, if not presently, & *extempore* put in execution, when they conveniently may, is in so far prescribed, that they then signifie no more than any other ordinary Bills or Bonds, which must be sued for in the ordinary Methods.

Case 5. If a Creditor upon any pretence, refuse to receive the Monyes due upon a Bill of Exchange, &c. What is then to be done?

Ans. Deposit the Value in the hands of the Magistrates of the place, or any other sufficient Persons, upon the account of such a Bill, and this shall be accounted good payment, and discharge both the Acceptant and the Drawer, if it be according to the tenor of the Bill.

Case 6. If the value of Monyes be imbalanced

en depressed, between the making and dissolving the Contract by Payment, whose shall the Profit or the Loss be?

Ans. The value of Monyes may be enhanced or depressed two wayes, Intrinsickly and Extrinsickly; As to the Extrinsick value of Monyes, the loss, without Controversie, is the Creditors, and the Profit also is, as is asserted in the sixteenth Chapter, fourteenth Proposition.

But as to the Intrinsick value of Monyes; if in this interval of time it be enhanced or depressed; if it be of a worse or a better alloy, of greater or lesser Prize, then the Debter must pay according to the value of the Monyes, at the time of making the Contract; and if any of the old Species of the old value be to be had, he should pay in that Species, whether it be to his profit or to his loss, and the reason is clear, If I borrow any Commodity, to pay again in Specie, both the Extrinsick and Intrinsick Value thereof must be considered.

As for Instance :

I borrow of my Neighbour ten Quarters of Wheat, the Quarter being then valued at 40 s. Now when I would pay my Neighbour his Wheat again, if what I will pay with be not so good, as that which I received, which is the Intrinsick value, there is no reason, but I should proportionably give him

him again more than the ten Quarters, and if my Wheat be better, there is no reason but that proportionably so much less should be restored, I allowing him the usual lawful Interest of his Monyes for the time; so also, as to the Extrinsicke value, supposed that the Wheat I will pay with, be as good every way, as that I received, but what then was bought for 40 s. per Quarter, may now be worth 50 s. or it may be is fallen and worth no more than 30 s. if the Debtor then pay the quantity, he is discharged, no respect being had to the Extrinsicke value, the Profit & loss thereof being the Creditors, as before was said; only let me here add, that we only speak of Bills of Exchange here, which suppose Punctual Payment; whereas if a Debtor should from time to time put off and delay Payment, after its due, there is no reason but if there be Loss he should bear it, and if there be Profit, that the Creditor should have it, because he himself the Debtor is in fault.

Case 7. If a Creditor of a Bill of Exchange do receive of his Debtor, or of the Debtors Debtor, or of any other, at the Debtors instance, other Bills of Exchange, payable at the same time by other Persons; if these Persons pay not, Whether is the Debtor discharged or no? Or suppose for Instance; I owe you 100 l. Sterling upon

upon Bills of Exchange, and Titius owed me an 100 l. Sterling upon Exchange also; Wherefore I desire Titius to make and give you Bills of Exchange, payable at Amsterdam, for the Value which you accept of, and discharge me. But before these Bills are paid, the Person they were drawn upon fails; The Question is, whether this Discharge be good or no, and you must only seek your Regress upon Titius? &c.

Ans. The Discharge is good, and you can only seek your Regress against Titius; for here is a relinquishing the first Debtor, and a taking of another in his stead, which is a Novation, which doth alwayes extinguish the first Contract: On this occasion we may speak shortly to five Cases more of this Nature.

1. *I am your Debtor, and Ceulus his Creditor, and I assign you upon Ceulus to receive your Payment, ordering him to pay you; Ceulus being then absent, you receive my Assignment, and deliver me my Bill, &c. Am I then discharged if Ceulus pay not?*

Ans. No; for here is but a simple *cessio Nominis*, and that of one that is absent, and therefore does not accept of the Payment; and this is not an Assignment properly, and therefore no Novation, its but an order to receive it in another place, and is therefore no Payment; and therefore I still remain obliged,

obliged, if you have been diligent in demanding Payment, and could procure none.

2. Suppose Ceulus were present, and did then accept of the order to make Payment, or afterwards doth accept, and promise to make Payment, and you consent to take your Payment of him: Am I then discharged if Payment follow not?

Ans^r. In the Affirmative, because here is an Assignment properly, which is more than *cessio Nominis*, because of the consent of the Parties, and is indeed a Novation, *qui delegat solvit* in this case, because *Dat nomen debitoris in solutum*; and here the first Debtor hath no more to do than to prove his Debt, unless he also obliged himself for his Debtors sufficiency, which condition doth alter the case, &c.

3. Suppose I am your Debtor, and order Ceulus, my Cashier, to pay, who promiseth to do it, but before he pay, he fails; am I then discharged?

Ans^r. The hazard is still the Creditors; for whether the Cashier were my Debtor, or not, its still an Assignment, which discharges me from you, for another having undertaken to pay my Debt, and my Creditor being therewith satisfied; what more can he pretend of me, my Cashier being alwayes supposed

posed to have ready Cash of mine in his Hands, when he undertakes to pay my Debt, and the Creditor may blame himself, if he did not timously enough receive it from my Cashier : But here is an exception ; If it can be proved that the first Debtor was conscious of the designed failure of his Debtor or Cashier, on whom he assigned, then the Payment is not good.

4. *Suppose I am your Debtor, and I order my Debtor to pay you, and he pays not, but promi-
seth to do it ; Whether is this my Debtor dis-
charged from me ?*

Ans. In the Affirmative, and is only ob-
liged to my Creditor till he pay him ; for this
is the nature of an Assignment, to loose the
Assignor from the assign and the assigned up-
on, and the Obligation remains only betwixt
him on whom is assigned, and him to whom
he is assigned, to which may be added, the
Considerations in the second immediately
foregoing Case, with which the common
practice agrees ; and if this Assignment will
discharge me from my Creditor, much more
will it discharge my Debtor from me.

5. *Suppose I am your Debtor upon a Bill of
Exchange, and I cannot pay in present Monyes,
but give you Secursty in Goods in stead of present
Payment, promising to pay within a certain time,*

or else that you shall keep the Goods for Payment, whereof you accept; the time of Payment being come, you not being desirous to keep those Goods, desire Payment in Monyes, to which I reply, That I am not obliged to do that, because we agreed, if I paid not within that time, you should keep those Goods for Payment: Which of these have the better Law?

Ans. Some say the Debtor hath the better case, because here is a clear and exprest Covent and Contract, and these must be observed, besides that, *in alternativis Electio est debitoris*, as the Law says. Others say the Creditor hath the better case, because this giving of Goods in Payment was only for Security, in case the Debtor should not be able to pay, and it was the Creditors Courtise to accept hereof; or if the Debtor think he did the Creditor a Courtise then, he ought not now to make it turn to his Prejudice and Loss; Besides, its well known, that he that hath a Pledge for a Debt may, if he please, sell the same, and pay himself, if the Debtor redeem it not within the appointed time. And all this serves to confirm what was before asserted, *Case 7.*

Case 8. But if I give you 100 l. Sterling on Exchange, & you make me Bills of Exchange payable by Peter; if Peter fail before he pay, his acceptants

ceptance signifies nothing, and I can compel you to pay me, if I duly make Protest.

Ans. In this case, this acceptance of the Bills hath not *vim et effectum solutionis*; and this is the common ordinary case, far different from that 7th Case foregoing, for here is no Assignment or Novation, for this is all this whole one, and the same Contract; whereas in the other there seems to be a new contract, destructive of the former; nay, its not so much as *Contractus cessiois*, which supposeth the Acceptant to be the Drawers Debtor alwayes, and if it were, yet here is no mention made of any such Contract; wherefore these Bills are only a bare order to the Acceptant to pay, and the Possessor is in this as a Messenger and Servant to demand payment only; wherefore this being consonant to the common and ordinary practice of Merchants, was never doubted of.

Case 9. Tullius of London gave 100 l. to John and Francis, who gave him Bills to receive the value at Amsterdam, payable by Francis to Mark; Tullius having received the Bills, incloseth them in a Letter of Advice, directed to Mark, and throws the Letter into the Post-house; this Letter of advice and Bills were intercepted by an unknown Person, who in Mark's Name, having counterfeited his hand, goes and receives the Moneyes of Francis of Amsterdam. Tullius

not knowing whether the Bills were paid or not, and afterwards advised, that Mark never received any such Bills, he sent him other Bills, which he procured of John and Francis for the same Sum; which received, Mark demands payment of Francis of Amsterdam, to whom Francis Replies, That he had already paid the first Bills; whereupon Tullius being advised thereof, demands restitution of John and Francis, or else order them to be paid. This John and Francis refuse to do, alledging them to be paid; in this case, the doubt is, whether John and Francis of London must be alternative condemned; either to make restitution, or order the Bills to be paid; and whether they remain Debtors to Francis, who paid before upon their order; or whether Francis must seek his regress on him, to whom he paid truly; or whether John and Francis of London, and Francis of Amsterdam are all discharged, only John and Francis must transfer to Tullius, *actionem furtivam* against him that received the Moneyes?

Ans^r. John and Francis must alternatively be condemned, as above, and do not remain Francis of Amsterdam his Debtors for what is paid by him, nor can they be molested by him, as having paid nothing by their order to their order; so that Francis of Amsterdam must seek his redress on him to whom he paid. The Reasons are these: 1. John and Francis are Tullius his Debtors, till the Bills be

be paid to him, or his order: 2. Though Francis of Amsterdam will endeavour to defend himself, alledging that he paid to one, whom he had just ground to believe was the true order of John and Francis, and that therefore upon his transferring of the action to Francis, he must be said to have paid well; for he paid to him that presented the Bills, and did assert, that he was that Mark nominated in them, and he knowing the Bills to be really the Bills of John and Francis, he therefore paid *bonâ fide*, and it was not for him to suspect the Bills to have fallen in wrong Hands, the Remitter should have better looked to them, &c. Yet all this, and as much more, will not excuse him. For this just ground of believing him to be the true order of the Drawer, will only excuse the Debtor and Acceptant, if the Debt be of a certain individual species or thing, not if the Debt be in *genere seu quantitate*; for he that is indebted any certain thing, is discharged if the thing be lost, *non interveniente dolo vel culpâ*, and so also upon the delivery thereof, *bona fide facta*, but in the paying of a certain Sum of Monyes its otherwise. Besides, Francis of Amsterdam was ordered to pay to Mark, not to the Bearer, and by paying to him, he exceeded the limits of his Commission; nor did he use that diligence, which he should, and would have done in his own case, seeing he

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would

would not but suspect and know that such cases do often happen, or at least may, and he should not pay but to a certain and known Person; wherefore he being faulty, his Negligence can Prejudice none but himself.

Object. But if John and Francis demand Restitution of the Bills, when Tullius demands Restitution of the Monyes; for Francis of Amsterdam will not part with them.

Ans. This notwithstanding John and Francis must make Restitution, for the Bills are in the Hands of their Factor and Correspondent, and he must seek them there.

Case 10. That an Acceptant may accept supra Protest, either in honour of the Drawer, or in honour of some Endorser, &c. and thereby oblige him for whose honour he accepts, &c. is before declared. But suppose Tullius is indebted to you 100 l. Sterling, and to me as much, and Tullius writes to you, That he will remit into my Hands the 100 l. for you, and order you to draw the same upon me, which Tullius also doth, and orders me to accept your Bills, whereupon you value upon me; but though I have received the Monyes to answer your Bills with, he being indebted to me, I keep the same for my own account, and accept your Bills supra Protest in your honour: In this case do I oblige you, the Drawer, for the Value paid by me? &c.

Ans.

Ans. Yes; this I may lawfully do though I received the Monyes positively with that order, to answer your Bills for the Value, which none will deny that are acquainted with the Merchantile Stile, especially if I fear my Debtor may fail; yet no wise Merchant would thus disoblige two special and sure Friends. But in this, as in all other cases of this Nature, he that would keep the Drawer obliged for that Draught (or any other Endorser) he must, after the Protest is made and compleated, write upon the Bill, *Accepted supra Protest in honour of such and such a one.* And 2^{dly}, He must pay *supra Protest* also, or else it will be judged that he receded from the first Protest, and accepted and paid freely and simply. 3^{dly}, As the due time he must redraw the Sum and the Charges on him, for whose account he accepted, if other Provision be not made before that time. 4^{thly}, None may accept *supra Protest*, in honour of any, till the Person on whom the Bill is directed, hath absolutely refused both freely and *supra Protest* to accept: And here by the way observe 5^{thly}, That if the Possessor will not accept of the Acceptants acceptance *supra Protest*, that he resolves himself freely to accept thereof, and he also must refuse it, before any third can be admitted. But 6^{thly}, If any man publickly declare and proclaim,

That such and such Bills should not be accepted (having special Commission for that end) then no man may accept, or having accepted, may not pay the same, but at his own Peril and Hazard, neither freely nor *supra Proest*. For 7thly, If the Drawer be failed, or suspected to be near failing, if any pay or accept, they do it either in their own, or to the Prejudice of the Creditors.

Case 11. You at London give to Vivianus 100 l. that he may give you Bills payable for the value at Amsterdam; Vivianus agrees and gives you open Letters of Advice, which you send to Peter at Amsterdam, Peter watching an opportunity falsifies the Bills, and for 100 l. demands 2, having made 1, 2, or made the Cyphers into a 6, or a 9. and so demanded 160, or 190 l. or 200 l. for 100 l. The Question is, who must bear this Loss; Bergonzus that paid the Bill, because he paid not well, or Vivianus that did express the Sum clearly enough in fair Characters, or you who chose such a Knave for your Correspondent?

Ans^r. Here two Cases must be distinguished; 1st, If the Falsification were palpable and evident, and easily discernable with half an Eye, then the Acceptant and Payer must bear the Loss, because he did not diligently observe those Figures when he paid, and his own Negligence can only Prejudice himself,
not

not another; yea, if there were but any ground of suspicion that the Figures were altered, its still the same; but 2dly, If the Falsification were so neat, that it could not so easily be discerned nor suspected, then the Acceptant pays well, and will be discharged both from the Remitter and the Drawer, and the Acceptant may seek his re-imbursment from the Drawer, and the Drawer must seek his from the Remitter, he making no Objection at the Receipt of the open Letters, for the badness of the Characters, &c. the Fault is his.

Case 12. *As an Objection against this; Suppose then any should Counterfeit my Hand, and by that means receives Monyes of my Correspondent, as by my order?*

Ans. Suppose it be never so neatly done, that no man could discern, no, nor I my self, that it was Counterfeit, yet I am not obliged to allow my Correspondent such Payments, because I never desired any such thing of him, nor never made any such Bills, nor writ any such Letters of Advice; wherefore Acceptants must be very cautious in paying, and for preventing such Frauds, Merchants should in all their Letters of Advice, reflect upon something that hath lately past between them.

Case 13. *If a Remitter in Commission give*
Money

Money to a Drawer, who gives him Bills, and afterwards before the Bills are paid or accepted, fails; Whose shall the Loss be, the Remitter, or his Principals?

Ans. If the Remitter remitted, or was ordered to remit upon his own *del credere*, he standing good for the Remises, the case is clear that he must bear the Loss; and though he may object, that he remitted, but not upon his own *del credere*, yet it will not excuse him; for he should not have remitted at all, if not according to express order. But 2^{dly}, If he were only simply desired to remit, then the Loss will be the Principals, unless, 3^{dly}, The Remitter contracted with one that was suspected and reported to be near failing, then he not acting for his Principal, as if he had acted for himself, and he must therefore bear the Loss; and though there were no other Drawer with whom the Remitter could contract, yet he ought not to have put his Principals Effects in hazard; for neither thus must an Acceptant pay to one that is near failing, though the Principal hath ordered it, (not knowing thereof) for even the Letter of Attorney to receive for another is *ipso facto* revoked, without any other further intimation thereof; and thus also would it have been if the Remitter had express order from the Principal to contract with that Drawer.

For other Cases of this nature, we refer to what is before hinted, &c.

Glaslema Quartum.

This my first Bill, &c.

Case 1. **VV** *Hether will an Acceptant be discharged, or may safely Pay when there is but one prima or secunda Bill presented to him?*

Answ. He may and must Pay, though at the day of Payment none but his accepted Bill be offered to him; for the command is, that the first or the second Bill should be paid, if neither of them were paid before.

2. They are all (were they never so many) but authentick Copies of the first, and one paid, the rest are null and void. 3. The Reason that more then one Bill is made, is only for the better security of the Remitter, and is no disadvantage to the Drawer, and are partly for proof of the Contract, if any Bill should be lost or miscarry, and partly for better obliging the Drawer and Acceptant to pay: Yet all this notwithstanding, as was before observed, he is very unwise that will pay upon one Bill, the other being pretended to be lost, unless the Possessor give Security for indemnifying the Acceptant, or

the Drawer, upon account of the lost Bill, because they are either of them Obligatory, especially he should see to receive his accepted Bill.

Glasfema Quintum.

To Francis.

CASE 1. **F**RANCIS hath a Bill remitted to him by his Correspondent at London, payable in Amsterdam, where Francis lives, which Bill Thomas of London drew, and charged upon himself, designing to be at Amsterdam before the day of Payment, and accordingly he arrives there, and Francis demands acceptance, which Thomas refuses; Whether may Francis compell him to accept? Thomas alledging, that he had no contract with Francis, nor is any way obliged to him, nor is he indeed without acceptance, for acceptance only doth oblige the Acceptant to the Possessor, and where there is no obligation, there lies no action; though the Bill be made payable to Francis, and Francis hath the Bill in possession, yet he hath only order to demand acceptance, and by virtue of that order he cannot judicially compell Thomas to accept; and from the bare naked possession of an obligatory Bill, there arises no obligation to the Possessor, unless he be the party concerned, &c.

Ans.

Ans. All this notwithstanding, yet in this case he must accept, or may by ready execution be compelled thereunto, he himself being both Drawer and Acceptant (though a person that is simply an Acceptant cannot be compelled thereto) because it would be to no purpose to return the Bill with protest for non-acceptance, he the Drawer himself, from whom redress must be sought, being there present; besides, this Drawer in his Bill, doth oblige himself to pay to *Francis*, and is the principal Debtor, who received the Monyes, &c.

Glassema Sextum.

The Value received.

Case 1. **V** *Hether this objection of the value not received may be opposed against an accepted Bill of Exchange, to discharge the Acceptant from his acceptance?*

Ans. Affirmatively; for, 1st, Though the Bill says expressly, that the value is received, and in that there seems to be a renunciation of this exception, yet the custom of Merchants hath introduced this practice, that though the Bills say its received, yet its seldom paid till two or three dayes after the Bill is made. And, 2^{dly}, The Acceptant is supposed

supposed to accept upon this condition; wherefore if he make this objection, then 3dly, The Possessor must prove payment, *onus pro Bandi, in actorem transfertur*, negatives cannot be proved. 4thly, If the Bill be protested, the Drawer is out of danger, not having received the value; for what hath the Remitter to demand, having not paid the value? wherefore the Acceptant need not fear that it will be returned again to be prosecuted against him, the Remitter being satisfied in his own hands. But if this objection be made, it must be done before the Bill be paid, else its ineffectual, and must have order from the Drawer, not to pay; otherwise, if he do pay, the Drawer may thank himself for the loss, if not paid before the time. But to prevent these Disputes, let the Drawer not part with his *secunda* Bill, if he say [*The value received*] till he hath received the value (and in this case, its unwisely done for an Acceptant to pay upon one Bill, though accepted, being the *secunda* may by the Drawer be detained till the value be paid) or else let him say [*on the value of such a one*] and leave it undetermined whether it be received, or be yet to be received; for else, if it be expressed as before [*The value received*] the Possessor will object against this exception for proof of the payment, the very Letter of the Bill, containing the clear confession of the Drawer.

Drawer. But here we may note, That this exception hath no place where the Drawer and Remitter is one individual Person, &c. nor hath it place if the Drawer be failed or dead.

Glassemā Septimum.

Place to Account.

Case 1. **I***F these words be omitted in the Bill, may the Acceptant simply accept, or supra protest?*

Answ. To protest in this case, is altogether superfluous and needless; for its for the Drawers account if he doth accept, unless the Letter of advice say, That its for anothers account.

Glassemā Octavum.

To Titus, &c. Merchant in London.

Case 1. **B***ills of Exchange being directed by the Drawer, can the Remitter compell the Drawer to alter the Bills, and give him Bills upon another?*

Answ. Not by compulsion, but if the Drawer consent, this may be done, else after
an

an Exchange-contract is made by the Broger, there is no repentance to either party upon any pretence : The Remitter contracts with the Drawer, and if he like not the Acceptant, the Drawer is still the same, and obliged to him till payment be made, much less may the Remitter alter the direction without the Drawers knowledge.

I think I need not tell the Reader, that Bills unsubscribed are like Bonds without Seals, and are not obligatory at all, and can scarce think that any Acceptant would accept such a Bill; wherefore that I may not swell the Book with unnecessary cases which seldom happen, I shall summarily hint at some things that remain, and so conclude, hoping that the Reasons contained in this Book, and these Cases resolved in it, will direct the understanding and judicious in any case whatever that may happen to them, whether *Drawers, Remitters, Acceptants or Possessors*, or any other way concerned in Bills of Exchange.

CHAP. XLIV.

Of the Execution of Exchanges.

Rule I.

PROCESSES and Suits of Law, concerning Bills of Exchange, should be summary, short and quick; *Present Execution*, that is, attachment of Goods and arrest of Person, does alwayes attend a protested Bill of Exchange. But,

II. If Bills be returned empty without protest, they cannot be priviledged with this extraordinary procedure, but are only looked upon as ordinary Bills or Bonds.

III. Though a third person be concerned in a Bill that is protested, and both the Drawer and Acceptant are failed, yet he is not lyable to answer the Creditors, nor can be molested upon that account; for though he was obliged to the Drawer and Acceptant, what doth this obligation concern their Creditors, he is no way obliged to them?

IV. Not only the Remitter himself, but his Heirs, Executors, Administrators and Assigns,

Assigns, or any other by his order may prosecute the Law upon a Bill of Exchange that was protested, and attach and arrest as if he himself was there.

V. If the Creditor, upon the return of the Bill with protest, do not presently procure satisfaction or security, nor demand of the Magistrate in some Weeks the priviledge of a Bill of Exchange, viz. ready Execution, he loses the priviledge of a Bill of Exchange.

VI. In the cases of Exchange, there should lie no appeal from one Court to another, from an Inferior to a Superior, unless the Creditor were put in possession of his demands first, or at least, that it was secured to him.

VII. Nor can the Judges be guilty of any Precipitancy in this case; for a Bill of Exchange is a Bond and Judgment, as good as an Hypotheca, and being already *res judicata*, the Execution cannot be suspended.

VIII. For the recognizance of Bills drawn by another in another place, its not necessary to fetch Witnesses from other places that can Swear they saw him write them, its enough that by comparing of the Hand-writings it appear that the Bills are of the Drawers writing.

IX. Bills of Exchange cannot, must not by any Authority whatever be arrested or detained, because they are introduced and confirmed by the Law of Nations, *i. e.* Foreign Bills.

X. In cases of Exchange, the custom of places, and their municipal Laws concerning the circumstances thereof must be observed, (as concerning the time of payment, of protesting, &c.) more than the common Law.

XI. If any subscribe a *tertia* Bill of Exchange, as security for the Drawer, he is as lyable to make satisfaction, if the Drawer fail, as if he were the Drawer himself, nor need the Remitter first excuse the Drawer.

XII. An execution of payment, or reconter (if a Liquidate Debt, otherwise not) may be opposed to hinder the present execution upon a Bill of Exchange, as also an exception of Prescription, *deli mali*, or that the Bill is not of the Drawers writing, nor subscribed by him, but a counterfeit.

XIII. If there be one or more Drawers, if all have subscribed all the Bills, or but one of them, they are all lyable to answer in case of Protest.

XIV.

XIV. If any one concerned in a Bill of Exchange, do not do their Duty, and what the Courtisie and Custom of Merchants obligeth them to, they themselves are lyable to make good all the Loss and Damage that may happen thereby.

XV. By *parata Executie*, is meant Attachments upon their Goods, or Arrests upon their Persons, or both; for here the Rule and Maxim of Law hath no place, *Qui non habet in ere luat in corpore*; i. e. That the doing of one should exclude the other, &c.

XVI. Not only common Reason, and the general Customs of Exchanges allow this *paratam Executionem*, in cases of Bills of Exchange, but also the Municipal Laws of places of Exchange.

XVII. This Law and Custom is of virtue and power against all that are named in a Bill of Exchange, so far as they are negligent of their duty, or any way faulty: But though a third or fourth be concerned in the Bill, if their Names be not in the Bills, this Law cannot reach them.

XVIII. If any by this ready Execution, do suffer wrongfully, they have their Regress against the actor, in an ordinary way only, and may recover Damages.

CHAP. XLV.

Of the Par of Exchanges.

TO conclude this Work, it will not be superfluous to give a transient view of the Par of Exchanges; and that I may be compendious in this, I shall omit the unnecessary Discourses of the variety of *Pars*, as also directions for the calculation thereof, referring those that are desirous of information herein to the *Map of Commerce*, in *English*, and to the Book entituled, *Underrichte der Wissel-handlung*, in *Hollands* and *High-Dutch*, and I shall only here observe what is the reputed *Par*, according to the *Intrinsic* value, or as is generally received among Merchants. But before this be done, it will be necessary to premise in what denominations every Country and City do keep their accounts and make their Exchange, which shall be done in this following method.

L O N D O N.

All Forreign Exchanges made for *England*, *Scotland* and *Ireland* are made at *London*, and accounts are kept there in *Pounds*, *Shillings*

A 2

and

and *Pence*, 20 *s.* makes a Pound, and 12 *d.* a Shilling, as is very well known, and so generally, which I would have noted once *NB.* for all, where any Country or City hereafter specified, is said to keep their Accounts in *Pounds*, *Shillings* and *Pence*, or in *Livers*, *Souls*, and *Deniers* (as they call them), that they are always divided or multiplied by 12 & 20, so that 20 *Shillings* or *Souls* make a *Liver* or *Pound*, and 12 *Pence* or *Deniers* make their *Soulz* or *Shilling*.

London then Exchanges with Italy, as with

Venice } Where accounts are kept in *Ducats* and *Grosses*; 24 *Grosses* make a *Ducat*, the *Ducat* is 6½ *Livers* or *Pounds*, under which denominations some Merchants in *Venice* do also keep their accounts; but the course of Exchange is always made upon the *Ducat* and *Grosses*: The *Ducat* is twofold, either *de ovo* or *banco*, which is *par* with 52 *d.* *Sterling*, or *de curranto*, which is *par* with 40 *d.* *Sterling*, in which broken Numbers London always Exchanges with Italy, giving them the *Pence* for their *Ducats* or *Crowns*, &c. The course of Exchange for *Venice* from London is generally 50½ *d.* to 51 *d.* *Sterling* *in circa* for their *Ducat* *in banco*.

The

Bergoma } The same with Venice, whither Eng-
land hath little Exchanges directly.

Florence } Where accounts are kept in
Pounds, Shillings and Pence *de ovo*, but they
Exchange upon the Crown *de ovo*, which is
valued at 7s of their Pound, and their Crown
currant at l. 7. and their Pound or Liver may
be par with 9 d. Sterling; their Crown currant
par with 63 d. their Crown banco or *de ovo*,
with 67½ d. Sterling. There is seldom any
direct course of Exchange from London thi-
ther, but to

Leghorne } There is a course of Exchange
at 53 d. Sterling in circa for their
Crown *de ovo*, being of the same value with
that of Florence.

Luica } The same with Florence and Leg-
horne.

Rome,
Placentia
Bollonia } Keeps accounts in Crowns, Shil-
lings and Pence *de ovo*; one Crown
makes 20 Shillings, 12 Pence makes
1 Shilling.

The Crown } *de Estampi* of Rome
 } *de Marchi* of Placentia
are of one value 7 s. 6 d. or 90 d. Sterling.

The Crown } *de Estampi* is worth 12 } *Juliers.*
 } currant worth 10 }

The *Juliers* is 10 *Bayocchis*.

England hath no direct course of Ex-
change

change to any of these places, or very seldom.

Naples } Keeps accounts in *Ducats*, *Tary*
Barry } and *Grani*, and exchanges thereupon,
Lechie } only they make a difference betwixt
the *Currant* and *Bank Ducat*, the one
being called *Moneta de ovo*, the other *Moneta*
curranto.

One *Ducat* is 5 *Tary*, the *par* with *London*
is 60 d. or 5 s. *Sterling* for one *Ducat*.

One *Tary* is 20 *Grani*; the *Tary* is 1 s.
Sterling in value.

One *Crown de ovo* is 6 *Tary*, or 6 s. 6 d.
or 78 d. *Sterling*.

One *Crown currant* is 5 *Tary*, or 5 s. 6 d.
or 66 d. *Sterling*.

One *Ducat Exchange-Monyes* is 6 *Tary* or
6 s. or 72 d. *Sterling*.

One *Ducat currant* is, as before, 5 *Tary*,
&c.

England hath no direct course of Exchanges
to these place, or very seldom at least.

Genua } Keeps accounts in *Pounds*, *Shillings*
} and *Pence de ovo*, some in *Pounds*, *Shil-*
lings and *Pence currant*, but the Exchange is
made upon the *Crowns* or *Shillings de ovo*; the
currant Liver or *Pound* is valued at 18 d. *Ster.*
the *Crown de ovo* is not always at one constant
price, but rises and falls, it should contain 68 s.

or 3 l. 8 s. but it rises sometimes to 4 l. 10 s. & to 5 l. of their Monyes; neither is there here any constant course of exchange from England

Milan } Keeps accounts in Pounds, Shillings and Pence, but exchanges upon the Crown de ovo, which is sometimes and for some places, said to contain 100 s. or 5 l. of their Monyes; and other times, and for other places *Qitts* 117 s. or 5 l. 17 s. of their Monyes: The *Curant Monyes* is here called, *Imperial*, the *Bank*, de Ovo; the Crown of 5 l. or *Livers*, is par with 60 d. or 5 s. *Sterl.* the Crown of 5 l. 17 s. with 70 d. or 5 s. 10 d. in circa; nor is there any constant course of Exchange from England to this City, &c.

Palermo } Keep accounts in Ounces, Tary
Messina } and Grani, and exchange in Ducats, Carlini, Crowns and Florines or Guilders.

One Ounce *Qitts* 30 Tary; the par of an Ounce with London is 12 s. 6 d.

One Tary *Qitts* 20 Grani; 1 Tary is 5 d. Sterling.

One Tary *Qitts* 2 Carlini; 1 Carlini 2¹/₂ d.

One Carlini *Qitts* 10 Grani; 1 Grani is 1 qr. Sterling.

One Grani *Qitts* 6 Piccollji.

One Ducat *Qitts* 13 Tary or 26 Carlini, par with England 65 d. or 5 s. 5 d.

One *Crown* currant 12 *Tary*, or 24 *Carlini*, valued at 60 d. or 5 s. *Sterling*.

One *Florine* 6 *Tary* or 12 *Carlini*, valued at 30 d. or 2 s. 6 d. *Sterling*.

England hath very little Exchange directly to these places.

London Exchanges with *Spain*, as with

Valentia } Where accounts are kept in
Barselona } Pounds, Shillings and Pence, but
Saragoza } they Exchange upon the *Ducat*,

which in { *Valentia* } is valued at { 21 s.
 { *Saragoza* } { 22 s.
 { *Barselona* } { 24 s.

of their Monyes.

The currant Monyes of these places are *Ryals*, whereof ten are reckoned to a *Pound* or *Liver*, so that

The *Ducat* of { *Valentia* } is { 10 }
 { *Saragoza* } { 11 } *Ryals*.
 { *Barselona* } { 12 }

The *Royal* is 2 s. in their Monyes.

The *Par* with London of *Valentia's Ducat* is 63 d. or 5 s. 3 d. *Sterling*.

The *Par* with London of *Saragoza's Ducat* is 66 d. or 5 s. 6 d. *Sterling*.

The *Par* with London of *Barselona's Ducat* is 72 d. or 6 s. *Sterling*.

They have also a *Crown* at *Barselona* valued at 22 s. of their Moneys. There is no constant

stant direct course of Exchange to these places from England.

Sevil, } And in all the rest of Spain, ac-
Cadiz, } counts are kept in *Marvedies*; but
Alcala, } for Exchange they have an imagi-
Madrid, } nary *Ducat*, which is always ac-
and all } counted for 375 *Marvedies*, or one
Castilia, } *Marvedie* more than 11 *Ryals*, 34
Marvedies making 1 *Ryal*; their *Crown* of
Gold is valued at 400 *Marvedies*; they have
also an imaginary Coyn, which they call, a
Castiliano, with which all their Exchanges for
Castilia are only made, valued at 485 *Mar-
vedeis*.

The *Par* of the *Ducat* of 375 *Marvedies*,
with London, is 5 s. 6½ d. *Sterling*, or 66 d.
Sterling. The course is usually 49 d. 50 d.
to 51 d. *Sterling* in circa.

London Exchanges with Portugal, as,
Lisbone } The Exchange from London to
Lisbone } Lisbone is made upon the *Mill Ree*,
1000 *Rees* making 1 *Mill Ree*, which is about
6 s. 6 d. to 7 s. according as the Exchange
runs.

NB, When I remit Moneys from London
to France, Spain and Portugal, &c. where
it is at so much per piece, as 54½ d. per *Crown*,
49 d. per piece ½ 6 s. 8 d. per *Mill Ree*, &c.
the lower the Exchange is, the better it is

for me, because if I deliver 100 *l.* I can have more Crowns at 54 *d.* than at 55 *d.* and so when I draw I must observe the contrary, that the higher it is, the less Exchange I shall pay. But when I remit for *Holland, Hambrough, Ireland, &c.* where Exchange runs at so much *per Pound Sterling*, or so much *per Centum*, the higher it is, the more is my gain; for I had better remit for *Hambrough* at 35 *s.* 3 *d.* *Flemish per Pound Sterling*, than at 35 *s.* And so for *Ireland*, where Exchange runs at so much *per 100 l.* sometimes when I pay 100 *l.* in *London*, I shall have a Bill payable in *Dublin* for 110 *l.* and other times but 105 *l.* according as Exchange runs.

London Exchanges with France, as Paris, Rouen, Lyons, Besancon, Marselles, &c. In all which places accounts are kept in *Pounds, Shillings and Pence Tournais*, but their Exchange is made upon the *Crown de or*, or *Crown of the Sun* (as *Bourdeaux* some call it) which is valued at 3 *l.* (or *Livers*) *Tournais*, or 60 *s.* (or *Souls*.) these *Crowns* are also divided into 20 *s.* *de or*, the *Shilling* into 12 *d.* *de or*.

These *Crowns de or*, or *Crowns of the Sun*, at their first Coynage did bear the true worth and value of 6 *s.* *Sterling*, or 72 *d.* *Sterling*, but the present *Lewises* are not worth above 4 *s.* 6 *d.* or 54 *d.* *Sterling*.

The course of Exchange from *London* to any of these places, is about 54 d. a 55 d. *Sterling* for a *French Crown* of 60 s. (or *Souls*) which is reckoned to be 30. a 32 per Centum advance, when Moneys is delivered in *England*.

<i>London Exchanges with the Netherlands,</i>	
<i>Antwerp for Brabant</i>	} In all these places accounts are kept in Pounds, Shillings & Pence Flem.
<i>Ryffels</i> }	
<i>Lille</i> } for <i>Flanders</i>	
<i>Amsterdam for Holland</i>	
<i>Rotterdam</i>	} or in Guilders, Stivers, and Groten Flemish, as the Merchants fancy,
<i>Dort</i> }	
<i>Middleburge</i> } for <i>Zealand</i>	
&c.	
<i>Colne for Germany.</i>	

but the Exchange is made upon the *Pound Flemish* for the most part. For the better understanding of the Exchanges of this place, it will be necessary to hint something of their Coyns and Value.

- 1 *Pound Flemish* is 20 s. *Flemish*.
- 1 *Shilling Flemish* is 12 d. *Flemish*.
- 1 *Guilder* is 20 *Stivers*.
- 1 *Specie Dollar* is 50 *Stivers*, or 2½ *Guilders*, or 100 *Groten* (1 *Stiver* being 2 *Grotes*) or 8 s. *Flemish*.
- 1 *Ducatoon* is 63 *Stivers*.
- 1 *Lyon Dollal* 40 *Stivers*.

1 Common Dollar 30 Stivers.

1 Zealand Dollar 30 Stivers.

1 Campen Dollar 26 Stivers.

1 Embden Dollar 23 Stivers.

The Par betwixt London and these places is reckoned generally to be 33 s. 4 d. for the Pound Sterling. But the course varies from 36 s. 3 d. Flemish, to 37 s. and upwards.

London Exchanges with Germany, as
Hambrough } Keep their accounts in Pounds,
Lubeck } Shillings and Pence Flemish, or
 in Marks, Shillings and Pence
 Lubs, or in Rixdollars, Shillings and Pence, as
 the Merchants please; they exchange upon
 the Pound Flemish, and upon the Specie Dollar,
 or upon the Exchange Dollar. For better un-
 derstanding hereof, note, that

1 Rixdollar is 3 Marks Lubs, or 48 s. Lubs,
 or 8 s. Flemish.

1 Mark Lubs is 16 s. Lubs, 1 s. Lubs is
 12 d.

1 Exchange Dollar (whereon Exchanges
 are made with Amsterdam and Frankford) is
 32 s. Lubs, and is par with 32 Stivers at Am-
 sterdam, or Marks Lubs.

The Par betwixt London and these places
 is reckoned to be 32 s. Flemish for 1 l. Sterling;
 The course is 35 s. 6 d. in circa.

Frankford, Nurenburge,
Augsburge, Vienna,
Leipzig, Strasburge,
Magdeburge, Berlin, &c.

London hath very seldom any Exchanges directly to any other places in Germany; but if there be any occasion to remit Monyes to, or draw Monyes from any other Cities of Germany (as Frankford on the main, Nurenburge, Augsburge, Vienna, Leipzig, Strasburge, Bermen, Magdeburge, Berlin, or any such like places) they do it either *via Amsterdam, Antwerp or Hambrongh*; wherefore it will not be unnessary to observe how the *Par* of these places bears one with another.

Hambrongh exchanges with *Frankford, Leipzig, Augsburge, Nurenburge, and Breslaw* in *Silesia*, as also with *Settine, Stralsund, and Wismar* in *Pomerane, &c.* upon the 100 *Speice* or *Currant Dollars* at so much *per Centum*; so also with *Berline, Magdeburge, Vienna, &c.* and all the places of *Germany*.

Amsterdam exchanges with *Antwerp*, 48 *Sivers* for 96 *d.* which in both places makes a *Rixdollar*.

Amsterdam exchanges with *Paris*, 100 *d. Flemish* for the *Crown* of 60 *Souls*, or for the *Lewis*.

Amsterdam exchanges with *Venice*, 100 *d. Flemish* for the *Ducat de ovo*.

Amsterdam exchanges with *Frankford* 87½ *d. Flemish* for the *Guilder*, a 65 *Krentzers*.
Amsterdam

Amsterdam exchanges with *Nuremberge* 72½ d. *Flemish* for the *Guilder*, 265 *Kreutzers*.

Amsterdam exchanges with *Leipzig* and *Breslaw*, and other places in *Germany*, 50 *Seivers* for a *Specie Dollar*; And these are the *Pars* of *Amsterdam*.

Amsterdam exchanges with *Colne*, *Ryssel*, *Rotterdam*, *Middelburge*, *Dort*, and such places they exchange upon the *Hundred*, at so much per *Cent*. as the time of payment is short or long.

Amsterdam exchanges with *Hambrough* upon the *Exchange Dollar* of 32 *Seivers* at *Amsterdam*, and 32 s. *Lubs* at *Hambrough*, which is the *Par* at both places.

London exchanges with *Poland* and *Prussia* via *Amsterdam* or *Hambrough*, as with *Dantzick* } Where accounts are kept in
Konigsbrough } *Guilders*, *Grosch* and *Pence Polish*;
 1 *Florine* or *Guilder* is 30 *Grosch*,
 1 *Grosch* is 18 d. *Polish*; 3 *Guilders*, or 90 *Gs.* make a *Rix-currant-Dollar*; *Specie* and *Cross Dollars* give at present 15 to 17 *Grosch* aggio: These places draw upon *Hambrough* upon the *Specie Rixdollar*, or so many *Dollars banco*; the course usually about 102 to 105 *Gs. Polish* for 1 *Dollar* in *banco*; and being the *Rixdollar* in current Moneys at *Dantzick* and *Konigsbrough* is valued at 4 s. 6 d. *Sterling*, therefore the Merchants usually reckon, that
 what

what they get in exchange above 90 *Grosch* Polish for a Bank Dollar at *Hambrough*, is so much profit and advance by the exchange.

When *Dantzick* values upon *Amsterdam*, Merchants reckon, whatever they advance above 216 *Gs.* Polish for the *Pound Flemish* in *banco*, is so much profit to the Drawer; for 216 *Gs.* Polish is reckoned to be *par* with 1 *l.* *Flemish* in *currant Moneys*. The course betwixt *Dantzick* and *Amsterdam* at present is 254 *Gs.* in *circa*. But (NB.) as Corn advances in price, the Exchange falls, so that I have known it sometimes under the *Par*.

The same may be said of *Konigsbrough*, with this exception, that it values always on *Amsterdam* in *currant Moneys*; the course at present may be about 242 *Gs.* for a *Pound Flemish*.

Dantzick and *Konigsbrough* exchange one with another at so much in the hundred; the course at present is *par*.

Dantzick exchanges with *Breslaw* in *Silesia*, at so much *per Cent.* there being very little difference in the value of the Moneys.

London Exchanges with *Sweeden*, as
Stockholme } Which exchanges for all *Swee-*
den, properly so called, *via Hambrough* or *Amsterdam*.

Sweeden keeps accounts in *Copper Dollars*, whereof five are reckoned to be worth (and

The Scale of Exchange.

par with) a *current Rixdollar*, or 3 *Guilders* *Polish*, or 4*s.* 6*d.* *Sterling*.

They have a *Silver Dollar*, which is called, the *Sweeds Rixdollar*, and is in value but half a *current Rixdollar* of *Germany* or *Poland*, or 2*s.* 3*d.* *Sterling*; in this specie the customs of all exported Goods must be paid, and its divided into 32 *Ore*, as they call them.

The *Dollar* in which the customs of all imported Goods must be paid, is the *Sweeds Copper-Plate Dollars*, which are in value twice as much as the other, viz. 90 *Gs.* or 3 *Guilders* *Polish*, or 4*s.* 6*d.* *Sterling*, in their *Copper-Plate Dollar* are reckoned 48 *Ore*.

They have also *Silver Mark* or *Guilder piece*, that are of the same value with the *Marks* *Lubs* and *Polish Guilders*, viz. 18*d.* *Sterling*, being the one third of a *current Rixdollar*.

But they exchange with *Hambrough* (whereon the greatest part of their exchange is made) upon a certain *Mark*, whereof 20 are reckoned to be par with the specie *Dollar* in Bank; and the course is sometimes 24 a 25, and upwards, per *Specie Dollar*; sometimes exchange may be made directly upon *London*, and then though they reckon 20 *Copper-Dollars* to be par with 20*s.* or 1*l.* *Sterling*, yet the course is frequently at 28 a 30 *Copper Dollars* per 1*l.* *Sterling*; but this

this is regulated according to the course of Trade.

London exchanges with *Liefland*, as

Riga, *Revel*, *Narva*, { But not direct, only via *Hambrough* and *Amsterdam*, as before was hinted of *Sweden* and *Prussia* (and to these we may add *Norva* in *Ingria*, or *Ingermanland* in *Russia*, which is also under the dominion of the *Sweeds*) at these places accounts are kept in *specie Dollars* and *Grosches*, reckoning 90 *Gs.* for a *specie Dollar*; *Riga* exchanges with *Hambrough* and *Amsterdam* upon the 100 *Dollars*, at so much per cent. sometimes *par*, sometimes 5 or 6 per cent. loss; *Revel* and *Narva* may probably use the same method in Exchanges, using *Coyns* of the same value; but if they are not the same with *Riga*, they will doubtless be the same with *Stockholme*, whither be referred.

Further, for conclusion observe, that

1 *Specie* or *Rixdollar* is valued at 4*s.* 6*d.* *Sterling*.

8 *s.* *Flemish*, or 50 *Stivers*.

3 *Mark Lub*, at *Lubeck* and *Hambrough*.

3 *Guilders Polish*.

3 *Livers French*.

6*l.* 10*s.* *Venice*.

24 good *Grosb* at *Leipzick*.

1 Mark, or 96 s. Danish; 1 Sleigh Dollar
 is 4 Mark Danish.
 6 Mark Pennist, as Svalfund.
 20 Mark Swedish.
 8 Spanish Ryals, or Maravedies 272.
 90 s. or Keyfers Grosch in Breslaw in Silesia.
 36 Marian Grosch, Luncburgs and Brauns
 Weickes.
 1 Mark Bremers, or 6 Kopffstuck,
 4 Tary at Naples.
 30 s. or Keyfers Grosch } at Augsburg and
 90 Kreuzers } Nuenburge.
 18 s. or Batzen in Frankeland and Swit-
 zerland.
 90 Kreuzers at Strasburge and Frankford.
 30 Keyfers Grosches at Vienna, &c.

FINIS.

